

SUPREME COURT, U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. ~~313~~ 15

WESTERN UNION TELEGRAPH COMPANY,
APPELLANT,

vs.

PENNSYLVANIA, BY SIDNEY GOTTLIEB,
ESCHEATOR.

APPEAL FROM THE SUPREME COURT OF THE COMMONWEALTH OF
PENNSYLVANIA, MIDDLE DISTRICT

FILED NOVEMBER 25, 1960

PROBABLE JURISDICTION NOTED JANUARY 23, 1961

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 543

WESTERN UNION TELEGRAPH COMPANY,
APPELLANT,

vs.

PENNSYLVANIA, BY SIDNEY GOTTLIEB,
ESCHEATOR.

APPEAL FROM THE SUPREME COURT OF THE COMMONWEALTH OF
PENNSYLVANIA, MIDDLE DISTRICT

INDEX

	Original	Print
Record from the Court of Common Pleas of Dauphin County, Pennsylvania		
Petition for escheat	3	1
Answer	8	4
Petition for order fixing time and place of hearing and directing service of notice by post- ing and publication	17	10
Order fixing time and place of hearing and directing posting and publication of notice thereof	19	11
Stipulation of facts	22	13
Opinion by the court, December 15, 1958	51	32
Decree, Neely, J.	75	47
Defendant's exceptions	76	48
Opinion by the court, July 6, 1959	80	51
Final decree, Neely, J.	88	56

Record from the Court of Common Pleas of
Dauphin County, Pennsylvania—Continued

EXHIBITS:

A—Record of Unpaid Money Orders to December 31, 1946 (first 2 pages)	89	57
—Record of Unpaid money orders for the year 1946, originating in Pennsylvania and destined to New York (pages 97-98)	89a	59
D-1—Excerpt, Book of Rules of December 1, 1916	91	61
D-2—Excerpt, Book of Rules of October 1, 1918	92	61
D-3—Excerpt, Book of Rules of February 1, 1920	92	62
D-4—Excerpt, Book of Rules of February 1, 1923	93	62
D-5—Excerpt, Book of Rules of February 1, 1926	95	63
D-6—Excerpt, Book of Rules of April, 1934 ..	96	64
D-7—Excerpt, FCC Tariff of January 23, 1939 ..	97	64
D-3—Sample Money Transfer Applications	99	65
—Money transfer drafts	103	66
D-4—Money transfer drafts	105	67
D-5—Money transfer application form	109	69
—Sender's receipt	111	70
—Notice to payee of caution transfer	113	71
—Money transfer draft	115	72
—Refund draft	117	73
—Money transfer draft	119	74
D-6—Money order application form	121	75
—Sender's receipt	123	76
—Money order draft	125	77
—Notice to payee of a "Caution" Order ..	127	78
D-8—Sender's receipt	135	79
—Money order draft	137	80
—Money order draft	141	81
—Refund draft	143	82
D-5—Refund notice	144a	83

	Original	Print
Record from the Court of Common ¹ Pleas of Dauphin County, Pennsylvania—Continued		
EXHIBITS:—Continued		
D-6—Notice to sender of undelivered money order	144b	84
D-10 and 11—Reverse side of application forms 72A and 72B	144d	85
D-12 and 13—Reverse side of application forms 72E and 72F	144e	86
D-14—Reverse side of application form 72H	144f	87
Proceedings in the Supreme Court of the Commonwealth of Pennsylvania, Middle District	153	88
Opinion, Musmanno, J.	153	88
Notice of appeal	161	97
Record of Unpaid money orders for the year 1946, originating in Pennsylvania and destined to New York (pages 97-98) (copy) (omitted in printing)	166	101
Triple certificate (omitted in printing)	170	102
Order noting probable jurisdiction	171	102

[fol. 3]

**IN THE COURT OF COMMON PLEAS OF
DAUPHIN COUNTY, PENNSYLVANIA**

No. 236—CD 1953

COMMONWEALTH OF PENNSYLVANIA
By Sidney Gottlieb, Escheator,

v.

THE WESTERN UNION TELEGRAPH COMPANY.

• • • • •

[fol. 4]

PETITION FOR ESCHEAT—Filed December 21, 1953

To the Honorable the Judges of the said Court:

The petition of Sidney Gottlieb, Escheator of the Commonwealth of Pennsylvania, brings this action under the provisions of the Act approved May 2, 1889, P. L. 66, and the amendment thereto, and says:

1. He was appointed Escheator of the Commonwealth of Pennsylvania, by Commission issued by the Secretary of Revenue of the Commonwealth of Pennsylvania.

2. The defendant, The Western Union Telegraph Company, is a corporation organized and existing under the [fol. 5] laws of the State of New York, with its principal place of business located at No. 60 Hudson Street, New York, New York. The defendant is authorized to do business in the State of Pennsylvania.

3. In the conduct of its business, the defendant has for many years maintained offices and places of business in Pennsylvania.

4. As part of its business the defendant carries on a telegraphic money order service for the transmission of money from person to person and from place to place.

5. In the conduct of its business, the defendant has from time to time, at its offices and places of business in Pennsylvania, received various sums of money from divers persons for transmission to other persons.

6. In each instance in which the defendant, at its offices and places of business in Pennsylvania, received moneys for transmittal, it sent its order, called by it a "money order", to its office or place of business at the place of destination designated by the sender, and by such money order directed the latter office of place of business, which it called its "paying office", to make payment to the payee named by the sender.

7. In each instance in which the defendant, at its offices and places of business in Pennsylvania, received moneys [fol. 6] for transmittal to places of destination other than United States immigration offices, U. S. Naval vessels or Mexico, it agreed with the sender that if payment could not be effected within 72 hours, Sundays and holidays excluded, after receipt of its money order at its paying office, refund of the moneys received by it would be made by it to the sender.

8. In each instance in which the defendant, at its offices and places of business in Pennsylvania, received moneys destined to U. S. Immigration stations and U. S. Naval vessels, it agreed with the sender that if payment could not be effected within 5 days after receipt of its money order at its paying office, refund of the moneys received by it would be made by it to the sender.

9. In each instance in which the defendant, at its offices and places of business in Pennsylvania, received moneys destined to Mexico, it agreed with the sender that if payment could not be effected within 10 days after receipt of its money order at its paying office, refund of the moneys received by it would be made by it to the sender.

10. In many instances in which the defendant, at its offices and places of business in Pennsylvania, received moneys from divers persons for transmittal to other persons, and sent its money order to its paying office at the

place of destination designated by the sender, payment [fol. 7] could not be effected within the time specified in the money order.

11. In many of the instances set forth in paragraph 10 above, payment has not been thereafter effected and refund of the moneys has not been made by the defendant to the sender.

12. In many instances in which payment could not be effected nor refund made, as above set forth, more than seven years have elapsed from the time the sender was first entitled to refund of the said moneys received by the defendant.

13. In each such instance in which the defendant, at its offices and places of business in Pennsylvania, received such moneys for transmittal, and has neither effected payment nor made refund for more than seven years since the sender was first entitled to such refund, the whereabouts of the sender have been unknown to the defendant for more than seven years and the said moneys have been unclaimed for more than seven years.

14. In each such instance, the defendant has at all times been ready, willing and able to refund such moneys to the sender, but has been unable to do so because the whereabouts of the sender have been unknown to the defendant to the present time and the said moneys have been unclaimed to the present time.

[fol. 8] 15. In each such instance, the said moneys have escheated to the Commonwealth under the laws of the Commonwealth of Pennsylvania.

Wherefore your petitioner prays that your Honorable Court hear and determine whether an escheat of the said property has occurred, and to enter a judgment or decree of escheat in favor of the Commonwealth of Pennsylvania.

And your petitioner will ever pray, etc.

Sidney Gottlieb, Escheator of the Commonwealth of Pennsylvania.

[Note: Affidavit omitted]

IN THE COURT OF COMMON PLEAS
OF DAUPHIN COUNTY, PENNSYLVANIA

ANSWER TO PETITION FOR ESCHEAT—Filed February 20, 1954

To the Honorable, the Judges of the said Court:

1. After reasonable investigation, the defendant is without knowledge or information sufficient to form a belief as to the averments of paragraph 1 of the petition and proof thereof is demanded.

2. The allegations of fact of paragraph 2 of the petition are admitted.

3. The allegations of fact of paragraph 3 of the petition are admitted.

[fol. 9] 4. The allegations of fact of paragraph 4 of the petition are admitted in part and denied in part. It is admitted that as part of its business the defendant carries on a telegraphic money order service, but it is denied that this service is for the transmission of money from person to person and from place to place. The defendant does not transmit money; it transmits only telegraph messages.

5. The allegations of fact of paragraph 5 of the petition are admitted in part and denied in part. It is admitted that the defendant has from time to time, at its offices and places of business in Pennsylvania, received various sums of money from divers persons who desired to send money orders, but it is denied that it received these sums of money for transmission to other persons. On the contrary, the defendant received these sums of money for transmission of telegraphic messages to the defendant's offices located nearest to the other persons, directing those offices to pay sums of money to the other persons, payment of the said sums to be made by delivering to the other persons negotiable drafts which the defendant agreed to cash immediately if cash was desired.

6. The allegations of fact of paragraph 6 of the petition are denied. The allegations set forth therein do not apply to each instance in which the defendant in Penn-

[fol. 10] sylvania received money from persons desiring to send money orders and, as set forth in paragraph 5 of this answer, the defendant in no instance received money for transmittal. In most instances, a person desiring to send a money order after entering the office of the defendant in Pennsylvania, filled out a money order application and handed the application to the telegraph clerk who calculated the charges and collected the same plus the principal amount of the money order from such person (the sender). The clerk or some other employee of the defendant then transmitted a telegraph message to the defendant's money-order office located nearest to the payee, directing that office to pay the principal amount of the money order to the payee, payment of the money order to be made by delivering to the payee a negotiable draft which the defendant agreed to cash immediately if cash was desired. In many instances during the period of time covered by the petition, however, there were variations from this procedure.

7. 8. 9. The allegations of fact of paragraphs 7, 8 and 9 of the petition are denied. The allegations thereof do not apply to each instance where the defendant in Pennsylvania received money from a person desiring to send a money order during the period of time covered by the petition. In many instances during this period of time, there were variations in the terms of the agreement between [fol. 11] the defendant and the sender. For the reasons set forth in paragraph 6 of this answer, it is denied that the defendant in any instance received money for transmittal. It is averred that in most instances in which the defendant received money in Pennsylvania from a person desiring to send a money order, the defendant agreed with the sender that if payment, by means of a negotiable draft issued by the defendant to the payee at its paying office, could not be effected within the respective time limitations mentioned in paragraph 7, 8 and 9 of the petition, the defendant would repay to the sender by means of a negotiable draft the principal amount of the money order.

10. The allegations of fact of paragraph 10 of the petition are denied in part and admitted in part. For the reasons set forth in paragraph 6 of this answer, it is denied that the defendant in many instances received money for transmittal. It is admitted that in many instances the defendant could not effect payment to a payee because the payee to whom a negotiable draft was to be issued in payment of the money order could not be found. In many instances the defendant paid the payee by issuing to the payee a negotiable draft, but neither the payee nor any other person thereafter presented the draft to the defendant for acceptance.

11. The allegations of fact of paragraph 11 of the petition are admitted. It is averred, however, that the defendant in many of the instances set forth in paragraph 10 above did not effect payment because the payee to whom a negotiable draft was to be issued in payment of the money order could not be found or the sender to whom a negotiable draft was to be issued in repayment of the money order could not be found. In many instances, however, the payee or the sender was paid or repaid by the issuance to him of a negotiable draft but the draft was not thereafter presented to the defendant for acceptance.

12. The allegations of fact of paragraph 12 of the petition are denied. It is averred that in many instances in which payment or repayment could not be made, as set forth in paragraph 11 hereof, more than seven years have elapsed from the time the sender was entitled to repayment or received a negotiable draft in repayment of the money received from the sender by the defendant.

13. The allegations of fact of paragraph 13 of the petition are denied. It is averred that in each instance in which the defendant at its offices and places of business in Pennsylvania received money from a person desiring to send a money order and did not effect payment or repayment as set forth in paragraph 11 hereof for more than seven years after the sender was first entitled to such repayment, the whereabouts of the sender have been un-

known for more than seven years and the sender, during such period of time, has neither made any claim for re-[fol. 13] payment nor, in a case where the defendant paid the sender by means of a negotiable draft, has the sender or any other person presented the draft to the defendant for acceptance.

14. The allegations of fact of paragraph 14 of the petition are denied. It is averred that in each instance where the defendant was unable to repay a sender by issuing to the sender a negotiable draft and in each instance in which a negotiable draft was issued to a sender in repayment, the defendant for a period of six years was ready, willing and able either to issue a draft to the sender or to accept a draft which had been issued but in many instances was unable to do so because the whereabouts of the sender were unknown to the defendant or the sender did not present the draft to the defendant. After such period of six years, any claim of the sender for repayment or for acceptance of a negotiable draft by the defendant was barred by Act 1713, March 27, 1 Sm. L. 76.

15. The allegations of paragraph 15 of the petition are denied for the following reasons:

(1) The defendant is a corporation organized and existing under the laws of and domiciled within the State of New York, and that state alone has the right and power to declare an escheat of any claims, debts and demands against the defendant arising out of its telegraphic money order [fol. 14] business. Such claims, debts and demands are not within or subject to the control of the Commonwealth of Pennsylvania. This Court is therefore without jurisdiction of the subject matter of this action, and Act 1889, May 2, P. L. 66, as amended, is unconstitutional if it purports to declare an escheat of such claims, debts or demands to the Commonwealth of Pennsylvania in that it deprives the defendant of property without due process of law contrary to the Fourteenth Amendment of the Constitution of the United States of America.

(2) The alleged claims, debts and demands which are the subject matter of this action have been barred by Act 1713, March 27, 1 Sm. L. 76. The defendant, therefore, is

now the rightful and lawful owner of any personal property concerning which the petition in this case asks this Court to decree an escheat, and such a decree would deprive the defendant of property without due process of law, would take the property of the defendant without just compensation and would impair the obligation of the contracts entered into between the defendant and the senders and payees of money orders, contrary to Article One, Sections 10 and 17, of the Constitution of the Commonwealth of Pennsylvania and contrary to the Fourteenth Amendment of the Constitution of the United States of America.

(3) In all instances where negotiable drafts were issued [fol. 15] sued by the defendant to the senders or payees of money orders, the defendant by such issuance fully and completely paid the said senders or payees, and since the dates of issuance of the said negotiable drafts the defendant has not been obligated to the said senders or payees, and the defendant does not now have in its possession or control any negotiable instruments made escheatable by the Act of 1889, as amended.

(4) To grant the prayer of the petition would deprive the defendant of property without due process of law contrary to the Fourteenth Amendment of the Constitution of the United States of America because in all instances where the senders of money orders from the Pennsylvania offices of the defendant were at the time of sending such money orders transients within the state and resided or were domiciled in other states, or where the senders if residents of or domiciled in Pennsylvania at the time of sending money orders have since changed their residence or domicile to another state, or where the payees of money orders at the time of sending money orders to them from the Pennsylvania offices of the defendant resided or were domiciled in states other than Pennsylvania or have at any time since resided or had their domicile in states other than Pennsylvania, the defendant is now or may be subject to multiple liability for the reason that the state or states of residence or domicile of the said senders or

payees have declared or may declare an escheat of any [fol. 16] claims, debts or demands of such senders or payees.

(5) This Court is without jurisdiction of the subject matter of this action for the reason that any claims, debts and demands which are involved are the property of the senders or payees of money orders at the domicile of the said senders or payees subject only to the jurisdiction of the state of domicile of the said persons.

(6) The Act under which this proceeding is brought is contrary to the Constitution of the Commonwealth of Pennsylvania and the Constitution of the United States of America in that it makes no provision for due and proper notice to payees or senders of the money orders involved and this proceeding is likewise contrary to the Constitution of the Commonwealth of Pennsylvania and the Constitution of the United States of America in that due and proper notice has not in fact been given to the said senders and payees.

Wherefore your petitioner prays that the petition for escheat be dismissed.

And your petitioner will ever pray, etc.

Rex Rowland, Smith, Buchanan, Ingersoll, Rodewald & Eckert, Attorneys for Defendant, 1301 Alcoa Building, Pittsburgh 19, Pennsylvania.

[fol. 17]

IN THE COURT OF COMMON PLEAS
OF DAUPHIN COUNTY, PENNSYLVANIA

PETITION FOR ORDER FIXING TIME AND PLACE OF HEARING
AND DIRECTING SERVICE OF NOTICE BY POSTING AND PUB-
LICATION

To the Honorable the Judges of the said Court:

The Petition of the Commonwealth of Pennsylvania, by Sidney Gottlieb, Escheator, respectfully represents as follows:

1. A Petition for Escheat was filed in the above matter by the Commonwealth of Pennsylvania against The Western Union Telegraph Company, setting forth that the defendant, at its places of business in Pennsylvania received various sums of money from divers persons for transmittal to other persons by the use of "Money Orders", that in a number of instances the defendant could not effect payment of the money orders, and the senders thereof were entitled to a refund from the defendant, because the whereabouts of the senders were and have been unknown for more than seven years, and that such moneys have been unclaimed for the said period of time.

2. The defendant has filed an Answer, raising issues of fact and questions of law.

3. Notice of the filing of the Petition for Escheat and of the time and place fixed for hearing thereon, cannot be served upon the persons entitled to payment of the sums set forth in the Petition because the whereabouts of [fol. 18] the senders or other persons entitled thereto have been unknown for more than seven years and until the present time.

Your Petitioner, therefore, prays that an order be entered fixing a time and place for hearing, and directing that notice of the filing of the Petition for Escheat and of the time and place fixed for hearing be served personally upon the defendant and upon all other persons having or claiming an interest in the property sought to

be escheated, by posting in the office of the Prothonotary of this Court and by publication in a newspaper or newspapers of general circulation in the form and manner directed by such order.

And your Petitioner will ever pray, etc.

Sidney Gottlieb, Escheator of the Commonwealth
of Pennsylvania.

[Affidavit Omitted]

[fol. 19]

IN THE COURT OF COMMON PLEAS
OF DAUPHIN COUNTY, PENNSYLVANIA

ORDER FIXING TIME AND PLACE OF HEARING AND DIRECTING
POSTING AND PUBLICATION OF NOTICE THEREOF—March
10, 1958

And now, this 10th day of March, 1958, upon consideration of the within petition, and upon motion of Sidney Gottlieb, Escheator, it is

Ordered that a hearing upon the Petition for Escheat and Answer thereto filed in the above entitled matter be fixed for Monday, the 19th day of May, 1958, at 10 o'clock a.m., in the Court of Common Pleas of Dauphin County in the Court House, Room 4, Harrisburg, Pennsylvania, and that notice of the filing of the Petition for Escheat, and of the time and place fixed for hearing thereon, be served upon all persons claiming an interest in the property sought to be escheated by posting in the office of the Prothonotary of Dauphin County in the place where other notices required to be posted are customarily posted, and by publication one time in each of three newspapers of general circulation, one in the County of Dauphin, one in the City of Philadelphia, and one in the City of Pittsburgh, such notice to be not less than twenty (20) days before the time fixed for hearing.

The notices shall be in substantially the following form:

ESCHEAT NOTICE

To all persons whatsoever claiming an interest in the personal property herein referred to:

Take notice that a Petition for Escheat has been filed in the Court of Common Pleas of Dauphin County, Com-[fol. 20] monwealth Docket No. 236 of 1953, by the Commonwealth of Pennsylvania against The Western Union Telegraph Company, for the escheat of property held or owing by The Western Union Telegraph Company, a corporation of the State of New York, the owners or beneficial owners of, or persons entitled to, the said property, or the whereabouts of such owners, beneficial owners or persons entitled, having been and remained unknown for the period of seven successive years, or the said property having been unclaimed for the period of seven successive years.

The said Petition for Escheat is on file in the office of the Prothonotary of Dauphin County, and is open to the examination of any party in interest.

The names and last known addresses of the owners or beneficial owners of, or persons entitled to, the said property, the nature and amount of such property are set forth in the records on file in the office of the Prothonotary.

The property sought to be escheated consists of amounts held and owing by The Western Union Telegraph Company, the defendant above named, arising from the receipt by it of various sums from divers persons for transmittal to other persons by the use of the defendant's money orders, and refundable to the senders because the defendant could not effect payment to the sendees, the whereabouts of the senders thereof, and of the owners or beneficial owners of or persons entitled to the said moneys, having been and remained unknown for seven successive years, and the said moneys having been unclaimed for the said period of seven successive years.

You are further notified that the Court has fixed Court Room No. 4, Harrisburg, Pennsylvania, as the place, and Monday, the 19th day of May, 1958, at 10 o'clock a.m., as the time of hearing on the said Petition for Escheat. If you intend to claim such property or any portion there-

of, or intend otherwise to show cause to the Court why such property or any portion thereof shall not escheat to the State, you shall, at or before the time fixed for hearing, file with the Clerk of the Court a written notice of your claim and the amount thereof, and at the time and place fixed for hearing appear in person or by duly authorized counsel and substantiate your claim, otherwise, unless cause to the contrary is shown, a judgment of escheat of the said property to the Commonwealth of Pennsylvania may be entered.

Sidney Gottlieb, Escheator of the Commonwealth of Pennsylvania.

By the Court: William H. Neely, Judge.

[fol. 22]

IN THE COURT OF COMMON PLEAS
OF DAUPHIN COUNTY, PENNSYLVANIA

STIPULATION OF FACTS—Filed April 18, 1958

It is agreed by and between the parties hereto that the following facts shall become a part of the record at the trial of this action with the same force and effect as though established by the production of proof thereon:

1. The Western Union Telegraph Company (hereinafter referred to as Western Union) is a corporation organized and existing under the laws of the State of New York with its principal place of business located at #60 Hudson Street, New York, New York. Western Union is authorized to do business in the Commonwealth of Pennsylvania.

2. Western Union is authorized to do business in the states of the United States, the District of Columbia and foreign countries and as a part of its business carries on a telegraphic money order service as more fully hereinafter described. Western Union on or about October 7, 1943, pursuant to permissive legislation enacted by the Congress of the United States of America (Section 222, Communications Act of 1934 as amended), merged with Postal-Telegraph, Inc., a Delaware corporation, and operating and

sales subsidiary companies. In so merging, Western Union assumed the obligations of Postal-Telegraph, Inc., and [fol. 23] subsidiary companies (hereinafter referred to collectively as Postal).

3. In the conduct of its telegraphic money order service Western Union has at all times been engaged in interstate, intrastate and foreign commerce and has been subject to regulation by the Interstate Commerce Commission from 1916 to 1934 and by the Federal Communications Commission from 1934 to the present and by similar public service regulatory bodies in the District of Columbia and in the several states including the Commonwealth of Pennsylvania. Available regulations governing said telegraphic money order service of Western Union are set forth in the following books of rules which are marked in evidence as Exhibits as follows:

Exhibit D-1—8th Edition, Book of Rules of December 1, 1916, Pages 111-120;

Exhibit D-2—9th Edition, Book of Rules of October 1, 1918, Pages 113-126;

Exhibit D-3—10th Edition, Book of Rules of February 1, 1920, Pages 115-134;

Exhibit D-4—11th Edition, Book of Rules of February 1, 1923, Pages 118-143;

Exhibit D-5—12th Edition, Book of Rules of February 1, 1926, Pages 120-153;

[fol. 24] Exhibit D-6—13th Edition, Book of Rules of April 1, 1934, Pages 95-142;

The foregoing books of rules as adopted by Western Union were filed with the existing federal and state regulatory bodies as the tariff regulations of the company applicable to its telegraphic money order service and were approved by such regulatory bodies. In 1938 the Federal Communications Commission directed Western Union to file its money order tariff in a different form, to clarify certain material therein and to eliminate other material there-

from. In pursuance of such direction Western Union on December 15, 1938, filed with the Federal Communications Commission its tariff FCC No. 179 in loose-leaf form, photostatic copy of which is marked in evidence as Exhibit D-7. Since 1939 the money order service tariffs of Western Union filed with the various state regulatory commissions have been in substantially the same form as the tariffs filed with the Federal Communications Commission. Western Union has continued to publish its rules in book form and the 14th Edition of its money order book of rules of September 1, 1939, is marked in evidence as Exhibit D-8.

4. In the conduct of its money order service, Western Union used the following forms, together with such other forms as are set forth or referred to in the several books of rules noted above:

- (a) Money order application—See Ex. D-3, Page 130; Ex. D-4, Pages 136, 137; Ex. D-5, Page 138; Ex. [fol. 25] D-6, Page 126; Ex. D-8, Page 95.
- (b) Senders receipt—See Ex. D-5, Page 140; Ex. D-6, Page 127; Ex. D-8, Page 96.
- (c) Money order draft—See Ex. D-3, Page 131; Ex. D-4, Page 138; Ex. D-5, Page 144; Ex. D-6, Page 128; Ex. D-8, Page 97.
- (d) Money order message transmittal form—See Ex. D-5, Page 143; Ex. D-6, Page 129; Ex. D-8, Page 98.
- (e) Money order notice (caution order)—See Ex. D-5, Page 141; Ex. D-6, Page 130; Ex. D-8, Page 99.
- (f) Money order notice (vigilant order)—See Ex. D-5, Page 142; Ex. D-6, Page 131; Ex. D-8, Page 100.
- (g) Bank money order, advice to bank—See Ex. D-4, Page 140; Ex. D-5, Page 146; Ex. D-6, Page 132; Ex. D-8, Page 101.
- (h) Bank money order draft—See Ex. D-3, Page 131; Ex. D-4, Page 139; Ex. D-5, Page 149; Ex. D-6, Page 133; Ex. D-8, Page 102.

- (i) Notice to sender of undelivered money order—See Ex. D-5, Page 148; Ex. D-6, Page 134; Ex. D-8, Page 103.
- (j) Notice to accompany refund draft—See Ex. D-6, Page 135; Ex. D-8, Page 104.
- [fol. 26] (k) Money order draft, refund to sender—See Ex. D-3, Page 131; Ex. D-4, Page 139; Ex. D-5, Page 147; Ex. D-6, Page 136; Ex. D-8, Page 105.

The form of senders receipt appearing in Exhibit D-8 went into use on July 31, 1935. The form of senders receipt appearing in exhibits of earlier dates remained substantially unchanged from 1916 to July, 1935. Exhibits D-1 to D-6, inclusive, and D-8 do not show the printed conditions appearing on the reverse side of the various Western Union money order application forms in use from 1916 through 1938. The following application forms or photostatic copies thereof, together with the conditions printed on the reverse side are marked as exhibits in this action and are a part of the proof in this action:

- Ex. D-9, application form 72 in use prior to 1915 and through December 1, 1916;
- Ex. D-10, application form 72 A in use from December 1, 1916 to October, 1920;
- Ex. D-11, application form 72 B in use from October, 1920 to August, 1921;
- Ex. D-12, application form 72 E in use from August to September, 1921;
- Ex. D-13, application form 72 F in use from September, 1921 to June or July, 1931;
- [fol. 27] Ex. D-14, application form 72 H in use from June or July, 1931 through 1938.

Application forms 72 C and 72 D were used during a limited period in the 1920's for the making of a duplicate or carbon copy of the original filled out by the sender. Copies of application forms 72 C and 72 D cannot be located. A search of old records indicates that Western Union never issued an application form designated 72 G.

For the purposes of this proceeding the parties hereto agree that telegraphic money order transactions of Western Union during the period 1939-1948 were handled under tariff provisions, rules and regulations and forms substantially similar to those found in Exhibits D-7, D-8 and D-14.

5. In its simplest and most common form the procedure observed in the handling of a Western Union money order is as follows:

The sender enters the office at point of origin, fills out money order application (paragraph 4 (a), supra) and hands the application to the telegraph clerk who calculates the charges and collects same plus the principal amount of the money order from the sender. The clerk then prepares a receipt (paragraph 4 (b), supra) which is given to the sender. The clerk or some other employee then transmits a telegraph message to the company's money order office located nearest to the payee, directing that office to pay the [fol. 28] principal amount of the money order to the payee in the form of a negotiable draft. The message between the company offices, partly in cipher, contains all pertinent information found on the application filled out by the sender. On receipt of the message, after checking for apparent errors and finding none, the office of destination prepares a money order draft (paragraph 4 (c), supra) payable to the named payee, together with a money order notice, caution or vigilant (paragraph 4 (c) or (f), supra) which notice is then delivered to the payee. The latter upon calling at the office and satisfactorily identifying himself is given the money order draft, counter-signed in his presence. The payee endorses the draft, hands it back and receives cash in the amount specified or, if he prefers, he may take the draft away with him to make such use thereof as he sees fit in which event he is required to sign a receipt for the draft. In the event that the payee cannot be located for the delivery of the money order notice, or in the event that he fails to call for the draft within 72 hours, the office of destination transmits a message to the office of origin advising the latter of

the reasons for nonpayment. The office of origin then sends a notice (paragraph 4 (i), supra) to the sender and when the sender calls at the office he receives a [fol. 29] draft (paragraph 4 (h), supra) which he may endorse and cash immediately at the office or, if he prefers, may carry it away with him. Variations of the foregoing are set forth in the tariffs, rules and regulations referred to heretofore.

6. From 1916 (and prior thereto) to the present, payment of Western Union money orders destined to foreign countries has been effected through connecting carriers, banks and other such media.

7. Cash received by Western Union for money orders, and not otherwise disbursed or treated by the company as set forth in paragraph 8 below, is deposited, along with other moneys of the company, in the general bank account or accounts of the company used for the carrying on of the company's general corporate business. No distinction is made by the company in the deposit of the moneys received for money orders and other moneys received by the company for any of its other services or otherwise. One deposit may include moneys received for money orders and other moneys received by the company. No separate account or accounts are maintained for payment of Western Union money orders. From 1916 (and prior thereto) to the present Western Union money order drafts have been drawn only on the company's fiscal and sub-fiscal agents located in major cities in the various geographical [fol. 30] areas of the country, said agents, as of this date, being as follows:

Fiscal Agents

<i>City and State</i>	<i>Name of Bank</i>
New York, New York	The Chase Manhattan Bank
Atlanta, Georgia	Citizens & Southern National Bank
Chicago, Illinois	Continental Illinois Natl. Bank & Trust Co.
Dallas, Texas	First National Bank
San Francisco, California	The Bank of California

Sub-Fiscal Agents

Minneapolis, Minn.	First National Bank
Omaha, Nebraska	Omaha National Bank
Denver, Colorado	First National Bank
Kansas City, Missouri	Commerce Trust Co.
Little Rock, Arkansas	Commercial National Bank
New Orleans, Louisiana	Whitney National Bank
St. Louis, Missouri	First National Bank
Los Angeles, California	Security First National Bank

At no time from 1916 to the present were Western Union money order drafts or Postal telegraphic money order drafts drawn on a bank or other paying agent located with- [fol. 31] in the Commonwealth of Pennsylvania. The amount of the general funds of the company in the bank accounts maintained by it in the conduct of its business always exceeded the amount necessary to pay the total of the outstanding money orders.

8. The principal bookkeeping and accounting controls maintained in order to facilitate the operation of the company's money order service may be summarized as follows:

A. Independent District Offices.

- (1) The manager or clerk accepting a money order records the receipt of the money in a daily Cash Record form 2566 F, marked in evidence as Exhibit D-15. The cash is placed in the cash drawer intermingled with monies collected for telegrams and other receipts. The cash is used for the purpose of paying incoming money orders and any cash expenditures enumerated on form 218, Other Disbursements and Credits—District Offices, marked in evidence as Exhibit D-16 and form 223, Payroll Summary—District Offices, marked in evidence as Exhibit D-17. Accumulation of surplus cash, if any, is deposited in a local bank account maintained by the

office manager in the name of Western Union. Accumulation of excess funds, if any, in the bank account is remitted by the manager in the form of a check to the Division Headquarters Cashier who [fol. 32] deposits the check in the account maintained at the divisional fiscal or sub-fiscal agency in the name of Western Union. The check from the manager to the cashier is accompanied by form 65 A, Notice of Remittance of Negotiable Paper to General Manager, marked in evidence as Exhibit D-18. In the event that the amount in the manager's bank account, together with cash on hand is, at any time, insufficient to meet the payment of incoming money orders and other expenses, the manager calls upon the Division Headquarters Cashier to furnish a check to meet the deficit and such check is forwarded as promptly as practicable.

- (2) At the close of his or her tour of duty, each clerk handling money orders completes the reverse side of the daily Cash Record (Ex. D-15). The completed daily Cash Records are summarized the following morning on Daily Summary of Receipts and Disbursements, form 213, marked in evidence as Exhibit D-19 and the totals of all receipts (including money order principal from column 7 of form 213) and disbursements are then recorded on the corresponding lines of form 217, Revenue and Disbursement Summary-District Offices, marked in evidence as Exhibit D-20. Form 217 is completed at [fol. 33] the end of the month and submitted to the controlling accounting center. The latter summarizes the forms 217, sent to it by all offices under its control and then submits the summary to the Division Auditor.
- (3) As indicated, drafts on incoming money orders are cashed when the payee so desires, the funds for such payments coming from monies collected for telegrams, principal and charges on outgoing money orders and other receipts. At designated intervals, the manager forwards cashed money order drafts,

accompanied by form 3828 A, Money Order Drafts Remitted, marked in evidence as Exhibit D-21, to the Division Auditor. The manager takes credit for the amounts of the drafts so forwarded in column 36 of form 213 (Ex. D-19) and line 48 of form 217 (Ex. D-20). At designated intervals, the manager also forwards to the Division Auditor, the money order applications accompanied by Statement of Money Order Applications forwarded to Division Auditor, form 3550 A, marked in evidence as Exhibit D-22.

*B. Main City Offices and Branch Offices
Reporting Thereto.*

- (1) The clerk at either the branch or main city office accepting a money order makes record thereof in [fol. 34] the money order section of the daily Cash Record (Ex. D-15) and places the money in the cash drawer intermingled with monies collected for messages and other receipts. The branch office manager may make cash disbursements only to cover incoming money orders and payroll expenses. Accumulation of surplus cash, if any, by a branch office manager is deposited in a local bank account in the name of Western Union under the jurisdiction of the main office cashier who may draw upon the local bank for the accumulation of excess funds on deposit at such local bank thereafter depositing the amount withdrawn in the main city office bank depository in the name of Western Union. In the event that the cash collected at the branch office is insufficient to meet the payment of incoming money orders and pay vouchers the main office cashier sends to the branch office the required additional cash. Accumulation of funds in the cashier's main office depository in excess of his requirements to meet payment of incoming money orders, pay vouchers and other expenses, is remitted by negotiable instrument to the Division Headquarters Cashier in the same manner in which a district office remits such excess funds.

[fol. 35] (2) At the close of the day the branch office manager completes forms 2566 F (Ex. D-15), summarizes them when more than one employee is involved, and reports the totals to the Accounting Center manager or Chief Bookkeeper at the main office through the medium of form 1688, Daily Report of Revenue and Receipts, marked in evidence as Exhibit D-23. The main office cashier completes form 1687, Daily Report of Cashier, marked in evidence as Exhibit D-24, and submits same to the Accounting Center Manager or Chief Bookkeeper. Money order principal is shown on line 5 of forms 1687 and 1688. The Accounting Center Manager or Chief Bookkeeper summarizes all forms 1687 and 1688 received from the main and all branch offices and records the totals on form 260, Summary of Daily Charges and Credits, marked in evidence as Exhibit D-25. All forms 260 are forwarded to the Division Auditor by the Accounting Center Manager or Chief Bookkeeper.

- (3) The branch office manager forwards money order applications to the main office Accounting Center Manager or Chief Bookkeeper who, at designated intervals, consolidates them and forwards them to the Division Auditor. As in the case of district offices, [fol. 36] drafts on incoming money orders are cashed and paid out of monies collected for telegrams, principal and charges on outgoing money orders and other receipts. At the close of each day, the branch office manager forwards the cashed money order drafts, accompanied by form 3828 A (Ex. D-21), to the main office cashier. The latter combines the drafts cashed at all offices under the jurisdiction of the main office and forwards them at designated intervals to the Division Auditor.
- (4) Except as indicated above, the accounting treatment of money orders handled through main city offices is substantially the same as that of money orders handled through district offices.

C. *Railroad Agency Offices.*

- (1) The manager or clerk accepting a money order records the receipt of the money on one of the lines, 49 to 55, of form 4-D, Monthly Report, marked in evidence as Exhibit D-26. The cash is placed in the cash drawer intermingled with monies collected for telegrams and other receipts. The manager uses the cash to pay incoming money orders when a payee desires that the draft be cashed and any other ex-[fol. 37] penses payable in cash enumerated on lines 26 through 29 of form 4-D. Depending upon the particular arrangement in effect, accumulation of excess cash, if any, is either deposited in the local bank account maintained by the manager for later remittance to the Western Union Division Headquarters Cashier, or may be remitted immediately to such official, accompanied by form 65 A (Ex. D-18); or it may be merged with funds of the railroad company subject to subsequent net settlements between the railroad company and the Western Union. In the event that cash available at any office is insufficient to meet payments on incoming money orders and other expenses, additional funds are forwarded to the office by the Western Union Division Headquarters Cashier.

Cash received for the money orders in some cases is placed in the cash drawer of the railroad company intermingled with other monies received by Western Union and the railroad company and in other cases the cash so received is placed in the cash drawer of Western Union intermingled with other monies received by Western Union.

The manager or clerk referred to herein in Paragraph 8 C is the employee of the railroad company.

- [fol. 38] (2) Drafts on incoming money orders are cashed when the payee so desires and paid out of monies collected for telegrams, principal and charges on outgoing money orders and other receipts. The manager then deposits such drafts in the local bank ac-

count or he may negotiate such drafts which are eventually charged back to the account of the Western Union Division Headquarters Cashier.

- (3) At the close of the month, the manager completes form 4-D and sends it to the headquarters office of the railroad company where it is consolidated with forms 4-D submitted by managers of other offices on the same railroad and a summary of the consolidated forms is submitted to the Western Union Division Auditor. At designated intervals, the manager forwards the money order applications to the Western Union Division Auditor.

D. *General*

- (1) The Division Auditors of the various divisions, associate or match all money order drafts with money order applications and issue and follow up inquiries regarding differences between drafts and applications. They also initiate and follow up inquiries regarding situations where no applications are on [fol. 39] hand for drafts issued and where no drafts are on hand for applications submitted to them. With respect to the latter two situations, applications, correspondence and other papers relevant thereto are preserved for a limited period (See paragraph 9, *infra*) and thereafter are destroyed following the making of the ledger entry referred to in the Summary and Schedules incorporated in Exhibits A and B, referred to in paragraph 17, *infra*. In those instances where the ledger entry does not show the name of the sender even when the draft was issued to the sender rather than to the payee designated on the application, the failure to include the sender's name on the ledger entry is explained by the fact that a draft issued to a sender contains sufficient detail to enable it to be matched with the ledger entry when and if the draft is returned to the Division Auditor. (In 1947, Western Union established, at Minneapolis, a central clearing agency known as

the Money Order Auditor and since then all money order drafts and applications have been forwarded to and cleared through that office. Since 1947 the Money Order Auditor has taken over the functions described above performed by the Division Auditors in prior years.)

- (2) Each Division Auditor summarizes the aggregate amount of received money order principal shown on [fol. 40] all forms submitted to him and summarizes the aggregate amounts of all monies paid out on money orders in his division and, on the basis of these summaries, enters in his accounts certain debits and credits in accordance with regulations contained in the Uniform System of Accounts, prescribed by the Interstate Commerce Commission and the Federal Communications Commission. An outline of the accounting procedures so prescribed is marked in evidence as Exhibit D-27. Each Division Auditor periodically submits a statement of net charges to the Auditor of Landlines at New York and, from the information therein contained, the Auditor of Landlines makes the proper entry on the general books of the company, again conforming to the procedure prescribed in said Uniform System of Accounts. As appears from said Exhibit D-27, during the periods pertinent in this action, funds received by the company as principal on money order transactions and credited to "Miscellaneous Accounts Payable—Telegram Transfers" were, when no claim was made therefor within six months, credited to "Other Non-transmission Revenue" and treated as income. Though not authorized by any specific regulation of the Interstate Commerce Commission, the defendant's practice of crediting such funds to "Other Non-transmission Revenue" and treating same as income after the expiration of the six month period was followed with the knowledge of and without objection on the part of the said Commission or its representatives during the entire period pertinent to this controversy and until January 1, 1943,

as of which date, under a specific regulation of the Federal Communications Commission, funds received by the Company as principal on money order transactions were, when no claim was made therefor within two years after date of acceptance, credited to "Extraordinary Current Income Credits" and treated as income. Copy of said regulation of the Federal Communications Commission, which is still in effect, is attached hereto and marked in evidence as Exhibit D-28.

- (3) Funds in the Division Headquarters Cashier's bank account, maintained at the fiscal or sub-fiscal agency, comprising remittances from all offices in the division are used to meet the headquarters payroll and other expenses as well as for the purpose of meeting payment of negotiated money order drafts and to finance deficit offices within the division. Accumulation of surplus funds, if any, is remitted to the com-[fol. 42] pany Treasurer. If the funds in the bank account of the Division Headquarters Cashier are insufficient to meet all payments and cash deficits in offices within his division he calls on the Treasurer for Authority to draw on the latter for funds to meet the deficit.

9. Western Union handles millions of messages and millions of money orders annually. Under regulations of the Federal Communications Commission and, prior to 1934 under the regulations of the Interstate Commerce Commission, relating to the preservation of records, telegraph companies are and were required to preserve records on individual message and money order transactions for comparatively limited periods of time and customarily destroy and destroyed such records at or shortly after the expiration of the prescribed periods. Where Western Union's money order drafts have been presented and cashed by it, all records relating to the particular transactions are and have been destroyed at or shortly after the expiration of the prescribed period. Attached hereto and marked in evidence are Exhibit D-29, excerpts from "Regulations to Govern

the Destruction of Records of Telephone, Telegraph and Cable Companies" prescribed by the Interstate Commerce Commission and in effect from February 1, 1914, to January 1, 1920; Exhibit D-30, excerpts from "Regulations to Govern the Destruction of Records of Telephone, Telegraph [fol. 43] and Cable Companies" prescribed by the Interstate Commerce Commission in 1920, adopted by the Federal Communications Commission in 1934 and in effect from January 1, 1920, to September 5, 1938; and Exhibit D-31, excerpts from "Rules of Telecommunication Carriers" prescribed by the Federal Communications Commission and in effect from September 6, 1938, to October 1, 1950.

10. In numerous instances telegraphic money orders are sent in pursuance of a prior agreement or understanding reached between the sender and payee and in numerous instances are sent in answer to a specific request made by the payee to the sender. In numerous instances the sender or payee is a resident of a state other than the one from or to which the money order is sent.

11. From 1916 to the present (and throughout the history of its money order service) Western Union has considered payment of the order, within the meaning of the provision permitting cancellation on the sender's request, effected at the moment the draft is delivered to the designated payee and it has not and will not, except in conformity with a court order so directing, cancel a money order transaction on request of the sender received at the office of destination after that office has delivered the draft to the payee.

12. On numerous occasions during the period 1915 to 1948 various offices of Western Union and Postal throughout [fol. 44] the country were burglarized and personnel on duty therein robbed. Monies received from patrons as money order principal often were among the funds stolen during the commission of such crimes but in no such instance did the telegraph company attempt to shift responsibility for the loss to the patron.

13. In 1955, the State of Washington enacted the Uniform Disposition of Unclaimed Property Act, Chapter 385,

Laws of 1955 (amended by Chapter 11, Laws of 1955) and in 1956 Arizona enacted Chapter 126 Laws of 1956, embodying with some modifications the provisions of the uniform act drafted by the National Conference of Commissioners on Uniform Laws. Items appearing on Schedules B and C, incorporated in Exhibits A and B, referred to in Paragraph 17, *infra*, originating in and/or destined to the States of Washington or Arizona may fall within the provisions of Section 9 of the Washington Act or Section 44-359 of the Arizona Act, the so-called "omnibus" sections of those statutes. The said statutes were enacted after the institution of the present proceeding. No action against Western Union has been instituted by the State of Washington or the State of Arizona under the provisions of the Washington or Arizona statutes, respectively.

14. In 1950, the Commonwealth of Massachusetts through its Commissioner of Revenue and Taxation also presented [fol. 45] claim against Western Union for the principal amounts of so-called "unclaimed" money order principal arising from the Massachusetts transactions of Western Union, contending that funds of this nature were escheatable to the Commonwealth of Massachusetts under the provisions of its Abandoned Property Act, Chapter 801, Acts of 1950; Massachusetts General Laws, Chapter 200A. Western Union, pointing out that said statute by its terms did not purport to apply to any abandoned property "if the period of time provided by any statute of limitations applicable to the owner's right as against a holder has expired," refused to file the report required by the act so far as pertinent to money order transactions. As of this date, the Commonwealth of Massachusetts has failed to commence any legal proceedings against Western Union under the provisions of said Abandoned Property Act.

15. All amounts covered by the items listed on Schedule D incorporated in Exhibits A and B, referred to in paragraph 17, *infra*, were paid by the defendant to the Comptroller of the State of New York under the provisions of the New York Abandoned Property Law, Section 1309, et seq. The Schedule D items listed for the years 1930-1933, inclusive, were included on the first report filed in New York

State and were paid to New York State in September 1949. [fol. 46] The Schedule D items listed for the years 1934, 1935, 1936 and 1937 were included on the subsequent annual reports and were paid in April or May 1950, 1951, 1952 and 1953, respectively. In making such payments to the Comptroller of the State of New York, Western Union conformed to and complied with all requirements of said statute. Items listed on Schedule E of said Exhibits A and B were reported to the Comptroller of the State of New York, along with other items (all involving situations where money order drafts were issued outside the State of New York) in separate schedules of the reports filed annually with said Comptroller. Western Union has refused to pay over to said Comptroller the amounts covered by the items listed on said Schedule E, notwithstanding the fact that the Attorney General of the State of New York has rendered a formal opinion to the effect that, quoting annotations to Section 1309, Abandoned Property Law of New York:

"This section is constitutional as applied to money orders accepted by telegraph company for delivery outside the state but within continental limits of United States."

.

"Money orders accepted by telegraph company, a domestic corporation, for delivery outside the state but within continental limits of United States are within the provisions of this section and amount held or owing [fol. 47] for the payment thereof after fifteen years must be paid to State Comptroller."

"1950, Op. Atty. Gen. 130."

Western Union and the Attorney General of the State of New York submitted the controversy involving said monies to the Appellate Division of the Supreme Court of the State of New York on an Agreed Statement of Facts, and the action is now awaiting hearing before that Court.

16. In the vast majority of its money order transactions Western Union succeeds in effecting delivery of the draft to the designated payee or to the sender if the payee can-

not be found. In comparing the number of drafts issued to the designated payee as against the number issued to the sender a study by sampling process of drafts issued on December 1, 1952, discloses the following:

ANALYSIS OF DEC. 1, 1952 DRAFTS

<i>Selected Control Units Reviewed</i>	<i>Number of Drafts Issued To Payee To Sender</i>	
Georgia-Idaho-Iowa	1,315	11
Maine, Maryland, Nebraska, Nevada, New Hampshire, New Mexico and No. Dakota	1,264	10
Oklahoma, Oregon	617	7
Rhode Island, So. Carolina, So. Dakota and Tennessee	1,243	5
Totals:	<hr/> 4,439	<hr/> 33

[fol. 48] 17. When, through no fault of its own, it is unable to issue the money order draft to the payee, Western Union cancels the money order transaction and endeavors to pay the amount of the money order to the sender in the manner hereinbefore set forth. Such payment to senders, through no fault of Western Union, has not always been accomplished as appears from the answer filed by the company in this action. Information from available records of the company has been compiled by the company and has been incorporated into Exhibit A covering the period from the earliest day for which records are available through December 31, 1946, and Exhibit B covering the period January 1, 1947, through December 31, 1948—both of which exhibits are attached hereto and admitted into evidence in this action as if established by formal proof. Each of said Exhibits A and B consists of a Summary and Schedule A relating to Pennsylvania intrastate money order transactions; Schedule B relating to money order transactions originating in Pennsylvania and destined elsewhere; Schedule C relating to money order transactions originating elsewhere and destined to Pennsylvania; Schedule D relating to money order transactions, the principal amounts of which have been paid to the State of New York under the provisions

of its Abandoned Property Law (see Paragraph 13, *supra*); and Schedule E relating to money order transactions which have been reported but not paid to the State of New York. [fol. 49] Insofar as the records of the company disclose, no demand for payment has been received by the company from the sender or the payee on any of the items set forth in the Schedules incorporated into said Exhibits A and B.

18. The parties agree that Postal money orders issued during the period January, 1930, to December, 1948, may be considered as having been handled under rules, regulations, practices and procedures substantially similar to those in effect for Western Union money orders during the same period.

19. It is agreed that since the date of compilation of Exhibit A referred to in Paragraph 17 hereof, the following items, the first two of which are listed in Schedule A, and the third of which is listed in Schedule C, of the said Exhibit have been cleared:

<i>Date</i>	<i>Amount</i>	<i>Origin</i>	<i>Destination</i>	<i>Payee</i>
7-19-46	\$ 2.00	Johnstown, Pa.	Johnstown, Pa.	Mrs. J. Bregman,
12-23-35	\$23.72	Charleroi, Pa.	Uniontown, Pa.	County Treas. of Fayette County
10- 8-46	\$ 6.00	Newark, N.J.	Collegeville, Pa.	E. G. Duffy

20. This stipulation does not include an agreement as to the materiality of the facts above stated. Either party may object to the materiality or relevance of any of the facts above stated.

[fol. 50] 21. Either party may present such other evidence at the trial of this cause as it may see fit.

The Western Union Telegraph Company, By Rex Rowland, Buchanan, Ingersoll, Rodewald, Kyle & Buerger, Attorneys for Defendant, 1301 Alcoa Building, Pittsburgh 19, Pennsylvania.

Commonwealth of Pennsylvania, By Sidney Gottlieb.

[fol. 51]

IN THE COURT OF COMMON PLEAS
OF DAUPHIN COUNTY, PENNSYLVANIA

OPINION—Filed December 15, 1958

By the Court:

This is an escheat proceeding. The matter is before us on the petition of the escheator who was appointed by the Secretary of Revenue. The respondent has filed an answer, wherein it is denied that the property mentioned in the petition is escheatable.

The petitioner seeks to escheat the moneys which were received at its offices and places of business in Pennsylvania for transmittal by telegraphic communication to respondent's places of business designated by the senders for payment to payees. It is averred in the petition that the respondent by money orders directed its paying offices at the points of destination to make payment to the payees named by the senders. The petition avers that the respondent agreed that if payment could not be effected within seventy-two hours after the receipt of these moneys at its paying offices, refund of the moneys deposited for the money orders would be made to the senders by the respondent; and that these moneys deposited have been unpaid and unclaimed for more than seven years.

The respondent contends that these moneys deposited in Pennsylvania are not escheatable because the defendant is [fol. 52] a New York corporation and that there may be liability for escheat in that State and other States. It is contended also that the escheat of these moneys would be in violation of due process of law because the respondent would not be protected against multiple liability in other States to which these money orders were sent. It is contended that the escheat of these moneys would be unconstitutional, as impairing the obligation of contracts, and that there is a violation of due process because the notice that was given of the hearing in this matter was inadequate.

This matter came on for hearing on May 19, 1958 in Court Room No. 4, pursuant to an order of the Court fixing

the hearing for that date. The escheator and the respondent appeared at that hearing by counsel. Depositions were taken. These depositions were supplemented by stipulations which were put into the record by agreement of both parties. These stipulations we believe contain those facts that are essential to the disposition of this case, and we adopt the stipulations as our factual findings in this matter. And since there is no dispute in the testimony taken at the hearing, we accept also the depositions as our findings in this case. While we accept all of this testimony as our factual findings, we herein state the facts in this case which we feel are of particular significance and accordingly make the following
[fol. 53]

FINDINGS OF FACT

1. The respondent is a New York corporation.
2. Moneys were deposited by the senders at offices of the respondent in Pennsylvania.
3. There were thousands of transactions.
4. These transactions have been referred to as money orders.
5. Each sender deposited moneys with the understanding that the respondent would transmit a telegraphic communication to another of its offices designated as the paying office where the amount deposited, less charges, would be paid to a designated payee.
6. Prior to December 31, 1946, a total of \$6,139.68 (Commonwealth's Exhibit No. 4) was deposited with The Western Union Telegraph Company to be transmitted to Pennsylvania destinations and has been unpaid as well as unclaimed.
7. Prior to December 31, 1946, a total of \$615.81 (Commonwealth's Exhibit No. 4) was deposited with Postal Telegraph Inc., to be transmitted to Pennsylvania destinations and has been unpaid as well as unclaimed.
8. Payments were to be made to payees at the destinations specified by senders.

[fol. 54] 9. The total sums transmitted prior to December 31, 1946 by The Western Union Telegraph Company and Postal Telegraph Inc., to be paid at Pennsylvania destinations, amounted to \$6,755.49, all of which is unclaimed.

10. Prior to December 31, 1946 there was deposited with The Western Union Telegraph Company for transmission by telegraphic communication to destinations outside of Pennsylvania the sum of \$31,547.97 (Commonwealth's Exhibit No. 4), which sum was to be paid to the payees named in the money orders at the respondent's offices of destination, all of which is unclaimed.

11. Prior to December 31, 1946, there was deposited with Postal Telegraph Inc., the sum of \$2,305.85 (Commonwealth's Exhibit No. 4) to be forwarded by money order to destinations outside of the State of Pennsylvania, all of which is unclaimed.

12. The total sums deposited prior to December 31, 1946 with the two companies by senders of money orders to be paid at destinations outside of the State amounted to \$33,853.82, all of which is unclaimed.

13. From January 1, 1947 to December 31, 1948, money orders totalling \$1,349.80 (Commonwealth's Exhibit No. 4) were purchased from respondent by senders for delivery to [fol. 55] payees at destinations in Pennsylvania, and \$4,280.73 was deposited by senders of money orders in Pennsylvania for delivery to payees outside of the State of Pennsylvania, all of which is unclaimed.

14. The respondent, the said Western Union Telegraph Company, a New York corporation, merged with Postal Telegraph Inc., a Delaware corporation, on or about October 7, 1943.

15. The New York corporation, respondent herein, was the surviving corporation and assumed all the obligations of the merged corporation, Postal Telegraph Inc., and its subsidiaries.

16. At the respondent's offices in Pennsylvania, the cash received on account of the purchase of money orders was commingled with daily receipts.

17. The surplus of these daily receipts in Pennsylvania over expenditures was deposited in local banks, and from time to time excess funds remitted to the respondent's out-of-state depositories. Money orders were drawn on these depositories.

18. It is not shown, however, that funds for the payment of money orders were earmarked and set aside from the general funds of the respondent on deposit anywhere.

19. The respondent contracted with persons purchasing money orders that if payment was not made to the payees [fol. 56] at the point of destination within seventy-two hours, the sums deposited by the senders would be refunded.

20. Such refunds were to be made at the point of origin, i.e., the point where the senders purchased the money orders in Pennsylvania.

21. The total amount of the unpaid money orders sent from points in Pennsylvania to points of destination in and out of Pennsylvania is \$46,239.84 (Commonwealth's Exhibit No. 4), all of which sum is held by the respondent and remains unpaid as well as unclaimed.

Discussion

It has been held with respect to an escheator's petition that it is "the duty of a petitioner for escheat 'clearly to aver a case within some act or acts of assembly'"; Escheat of \$92,800, 361 Pa. 51, 57 (1949); Commonwealth ex rel. Reno, et al. v. Pennsylvania Co., Etc., 339 Pa. 513, 516 (1940). And the procedure provided for in the statute invoked must be pursued: Rosenfeld's Appeal, 337 Pa. 183, 187 (1940).

The petition is brought under the Act of May 2, 1889, P. L. 66, as last amended by the Act of July 29, 1953, P. L. 986. Petitioner by his petition has proceeded in accordance with the provisions of this statute. As entitling the State to escheat the moneys held by the respondent, the escheator invoked § 3 of the Act of 1889, as amended by the Act of 1953, 27 P. S. 333, defining by the amendment escheatable property, inter alia, as follows:

"Whensoever the owner, beneficial owner of, or person entitled to any real or personal property within or subject to the control of the Commonwealth or the whereabouts of such owner, beneficial owner or person entitled has been or shall be and remain unknown for the period of seven successive years, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth, subject to all legal demands on the same.

"Whensoever any real or personal property within or subject to the control of this Commonwealth has been or shall be and remain unclaimed for the period of seven successive years, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth, subject to all legal demands on the same."

Are the moneys on deposit with the respondent in this State represented by unpaid money orders which have been unclaimed for more than seven years escheatable in Pennsylvania? The deposits were made in numerous localities throughout the Commonwealth, the respondent having con-[fol. 58] tracted to refund the moneys in this State to the senders if payment was not made within seventy-two hours to the payees named in the money orders.

"A legislative provision for escheat is a valid exercise of the police power of the State: * * * ." The State has jurisdiction "over intangibles and * * * power to subject them to escheat even as against possible non-resident owners": Philadelphia Electric Company Case, 352 Pa., 457, 463, 464 (1945).

In *Standard Oil Co. v. New Jersey*, 341 U.S. 428 (1951), it was held that regardless of theories as to their situs, stock certificates and undelivered dividends, whose owners have been unknown or have made no claim thereon for fourteen successive years, may be escheated by the domiciliary State of the corporation (New Jersey), even as against holders of stock and dividends whose last known addresses were chiefly in other States and foreign countries.

These two cases last cited stand for the proposition that the State has power to escheat intangible property held by a corporation in the State of domicile, and emphasize the power of the State to seize ownerless property even as against possible non-resident owners. There is involved in the instant case, however, not the question of the State's jurisdiction over unclaimed property held by a corporation [fol. 59] domiciled here where possible non-residents may be affected. We are concerned in this case with the question of jurisdiction of this State over property held in the State by a corporation domiciled in another State. This proceeding involves (a) money held in Pennsylvania by the respondent, a New York corporation; (b) the depositors of money (the senders of money orders) who have made no claim for the refund of their deposits; and (c) other possible unknown claimants—payees or others who may have any interest in the uncashed money orders. Some of the payees named in the money orders were in Pennsylvania, while others were outside of this State. All the senders were in Pennsylvania.

The res involved here is the debt or demand of the State because of moneys deposited within this Commonwealth to pay money orders which have been unpaid and unclaimed. Funds are on deposit here in local banks.

In *Security Savings Bank v. State of California*, 263 U.S. 282 (1923), the Supreme Court, in dealing with the question of the right of the State of California to escheat unclaimed deposits in savings banks, stated at page 285:

"The unclaimed deposits are debts due by a California corporation with its place of business there. * * * The debts arose out of contracts made and to be performed there. * * * Thus the deposits are clearly intangible property within the State. Over this intangible property the State has the same dominion that it has over tangible property."

We are here dealing with the seizure and forfeiture in Pennsylvania of intangible property held by a New York corporation within the dominion of this State, whereas in the *Security Savings Bank* case, the Philadelphia Electric

case, and the Standard Oil case, the courts in each instance were considering the question of the escheat of intangible property held by a corporation in its State of domicile.

We think the language of the Supreme Court in the Security Savings Bank case throws considerable light on the nature of an escheat proceeding and we quote in part therefrom at pages 286-287-288:

"The proceeding is not one in personam—at least, not so far as concerns the depositor. The State does not seek to enforce any claim against him. It seeks to have the deposit transferred. The suit determines the custody (and perhaps the ownership) of the deposit. The state court likened the proceeding to garnishment, and thought that it should be described as quasi in rem. In form it resembles garnishment. In substance it is like proceedings in escheat, * * * ; for confiscation, * * * ; for forfeiture, * * * ; for condemnation, * * * ; [fol. 61] for registry of titles, * * * ; and libels for possession brought by the Alien Property Custodian, * * * . These are generally considered proceedings strictly in rem. But whether the proceeding should be described as being in rem or as being quasi in rem is not of legal significance in this connection. In either case the essentials of jurisdiction over the deposits are that there be seizure of the res at the commencement of the suit; and reasonable notice and opportunity to be heard. * * * There is a seizure or its equivalent. * * * Moreover, there is no constitutional objection to considering the proceeding as in personam, so far as concerns the bank; as quasi in rem, so far as concerns the depositors; and as strictly in rem, so far as concerns other claimants.

"Seizure of the deposit is effected by the personal service made upon the bank. * * * Thereby the res is subjected to the jurisdiction of the court. * * * The fact that the claim of the State to the deposit may be defeated by the appearance of the debtor or other claimant does not, as argued, prove that the deposit was not seized."

It seems to us that the petition for escheat, when served upon the respondent, must have had the same effect as the [fol. 62] suit instituted by the Attorney General in the State of California in the Security Savings Bank case. The escheat petition is clearly directed against the funds of the defendant located within this Commonwealth. We are aware that it has been held that intangible property held by a corporation has its situs in the State of incorporation for purposes of taxation: *Commonwealth v. Schuylkill Trust Company*, 327 Pa. 127 (1937). We think the important factor in the instant case is not situs but rather the dominion of the res. The property here to be escheated—respondent's deposits in Pennsylvania banks—"is a part of the mass of property within the state whose transfer and devolution is subject to state control": *Standard Oil Co. v. New Jersey*, 341 U. S., *supra*, at 438, 441.

Escheat proceedings involve the forfeiture to the State of particular and identified ownerless property. The many statutes on the subject define and specify the particular property that is escheatable. And implicit in the decisional law on the subject we believe is the requirement that the escheator must deal with a defined res. Escheat of \$92,800, 361 Pa., *supra*; *Philadelphia Electric Company case*, 352 Pa., *supra*; *Pennsylvania Power & Light Company case*, 352 Pa. 466 (1945); *Commonwealth ex rel. Reno, et al. v. Pennsylvania Co., etc.*, 339 Pa., *supra*; *Rosenfeld's Appeal*, 337 Pa. *supra*; *In Re Escheat of Moneys in Custody of United [fol. 63] States Treasury*, 322 Pa. 481 (1936); *Germantown Trust Co. v. Powell*, 265 Pa. 71 (1919); *Commonwealth v. Dollar Savings Bank*, 259 Pa. 138 (1917); *Alton's Estate*, 220 Pa. 258 (1908); *Cunnius v. Reading School District*, 206 Pa. 469 (1903). These are but a few of the cases dealing with the subject of escheat, but they are sufficient to show that proceedings are had against particularly identified property, frequently moneys, deposits, securities or other liquid funds.

While this case presents questions differing in some aspects from the problems decided by this Court in *Frank B. Murdoch and Leo Weinrott, Escheators of the Commonwealth of Pennsylvania v. Pennsylvania Railroad Company*, 257 Commonwealth Docket 1954 (not yet reported), Judge

Kreider's exhaustive opinion in that case interprets the Act of 1889, as amended by the Act of 1953, and should be read by all persons interested in the subject of escheat as being a comprehensive consideration not only of the application of the Act, as amended, but constitutional aspects of the statute as well.

Not only is the res involved herein within the domain of Pennsylvania, but the circumstances under which that res came into existence are of particular importance. As a matter of contract, when the deposits were made, money orders that were not cashed within seventy-two hours by the payees were to be refunded to the depositors. This was an [fol. 64] express contract which called for its execution within this State. The name and address of each sender was noted on the application form at the point where the money was sent. There were thousands of transactions involving sums in various amounts. The transactions concerning the deposits and the agreements for refund all occurred within this State. Pennsylvania's contact with these many transactions and its dominion over the funds here on deposit should entitle this State to escheat the unclaimed sums that were deposited for money orders.

Our attention has been called to a decision by the Supreme Court of the United States—*Connecticut Mutual Life Insurance Co., et al. v. Moore*, 333 U.S. 541 (1948). That case involved an interpretation of the New York Abandoned Property Law, which, *inter alia*, provided that moneys held or owing by any life insurance corporation, which shall remain unclaimed for seven years by persons entitled thereto, shall be deemed abandoned property. In a declaratory judgment proceeding, nine insurance companies, incorporated in States other than New York, sought in the Supreme Court of New York a declaration of the invalidity of the Abandoned Property Law as applied to moneys held or owed by these insurance companies. The New York Courts held such moneys to be subject to escheat. The Supreme Court of the United States, in affirming the judgment of the Court of [fol. 65] Appeals of New York, held that New York had the power to take over these abandoned moneys in the hands of the foreign insurance companies. The majority of the Court was of the view that the State of New York had such con-

tacts with the transactions involving the insurance policies in question as to entitle the State to escheat the proceeds of the policies which remained unclaimed. There were three dissents, Justices Frankfurter, Jackson and Douglas, which were occasioned in some measure at least because of the dissatisfaction of the dissenting Justices with the procedure by which the questions were brought before the Court. These dissenters felt that the general declaration of the validity of the law, and that accordingly New York had power to take over the abandoned moneys in the hands of foreign corporations, was not a sufficient answer to many of the problems that would arise under the New York law, and that, therefore, there should be no adjudication in the matter until cases were presented containing justiciable issues in a more concrete form.

We are inclined to the view that there is an issue involved here that is sufficiently defined as to satisfy the requirements of the dissenting Justices as outlined in the Connecticut Mutual Life Insurance case. And we believe also that the Connecticut Mutual case clearly establishes Pennsylvania's right to escheat in this case the funds within its jurisdiction.

[fol. 66] It should be observed that Mr. Justice Frankfurter, in the Connecticut Mutual case, stated at page 554: "For all we know there are no funds in New York to which that State could lay claim even within the circumscribed affirmance by this Court of the New York judgment." The deposit of funds within the jurisdiction of the State differentiates the instant case from the abstract declaration of law sought and obtained by the insurance companies in the Connecticut Mutual case. The funds deposited here, even though in local banks for current purposes, give this State an important contact with the ownerless property involved herein.

In our judgment, when ownerless property held by a foreign corporation is within the dominion of this State, i.e., the res is subject to the State's control, Pennsylvania has the right to escheat the money, even as against the claims of the corporation's State of domicile, where the State has had extensive contact with the transactions by which the res was created. The rationale of the decisions herein cited points to this as being the correct conclusion.

There is no constitutional objection to the escheat of the moneys held by the respondent. Most of the questions raised by the respondent as constitutional objections have been decided against the respondent in *Standard Oil Co. v. New Jersey*, 341 U.S., *supra*. The respondent has argued [fol. 67] that the statutory escheat of these moneys takes its property without due process of law because it is not protected from claims by New York and other States.¹ If the respondent's debt, represented by these unclaimed deposits, is taken by a valid judgment in this State, the same debts or demands against respondent cannot be taken by another State. In the *Standard Oil Company* case, at page 443, the Supreme Court said:

" . . . The Full Faith and Credit Clause bars any such double escheat. Cf. *Baltimore & Ohio R. Co. v. Hostetter*, 240 U. S. 620, 624, and cases cited, particularly *Harris v. Balk*, 198 U. S. 215, 226."

And continuing, the Court stated:

" . . . The claim of no other state to this property is before us and, of course, determination of any right of a claimant state against New Jersey for the property escheated by New Jersey must await presentation here."

It seems to us that this case affords a complete answer to the contention that New York might escheat these moneys. The claim of New York is not before us, and surely this escheat proceeding should not abate because of some claim that may or may not in the future be pre-[fol. 68] sented. When and if proceedings in this matter are brought within the jurisdiction of a higher tribunal, the claims of other States may be duly adjudicated therein.

In connection with due process, the respondent complains that the notice to any claimants was insufficient. Section 8 of the Act of 1889, as amended, 27 P. S. 48, as to notice, provides that—

¹ Although respondent asserted ownership of the funds in question in its answer, that position was abandoned in its brief and oral argument.

“ * * * and the said court shall make such orders relative to advertisements and notices of the proceedings, as shall best serve to inform and advise all parties having an interest, or who may have an interest in said proceedings, of the pendency thereof.”

The statute does not spell out the extent of the notice required, and in conformity with this provision in the statute the Court ordered publication one time in a newspaper of general circulation in Philadelphia, Pittsburgh and Dauphin County, all publications to be at least twenty days prior to the date fixed for hearing. We also directed that notice be published in the office of the Prothonotary of this Court.

The petition for hearing recited that—

“Notice of the filing of the Petition for Escheat and of the time and place fixed for hearing thereon, cannot be served upon the persons entitled to payment of the sums set forth in the Petition because the whereabouts of the senders or other persons entitled thereto [fol. 69] have been unknown for more than seven years and until the present time.”

The order which the Court made with respect to notice reads as follows: .

“ * * * it is ORDERED that a hearing upon the Petition for Escheat and Answer thereto filed in the above entitled matter be fixed for Monday, the 19 day of May, 1958, at 10 o'clock a.m., in the Court of Common Pleas of Dauphin County in the Court House, Room 4, Harrisburg, Pennsylvania, and that notice of the filing of the Petition for Escheat, and of the time and place fixed for hearing thereon, be served upon all persons claiming an interest in the property sought to be escheated by posting in the office of the Prothonotary of Dauphin County in the place where other notices required to be posted are customarily posted, and by publication one time in each of three newspapers of general circulation, one in the County of Dauphin, one in the City of Philadelphia, and one in the City of Pitts-

burgh, such notice to be not less than twenty (20) days before the time fixed for hearing."

We call attention to the Security Savings Bank case, as well as the Standard Oil case, where notice by publication was given. And in *Anderson National Bank, et al. v. Luckett, et al.*, 321 U. S. 233 (1944) at 244, the Supreme [fol. 70] Court of the United States recognized as valid a statutory notice in an escheat proceeding which consisted of "the posting of a notice on the door of the court house in a Kentucky county"; and at page 243 the Court made this significant comment:

"The statute itself is notice to all depositors of banks within the state, of the conditions on which the balances of inactive accounts will be deemed presumptively abandoned, and their surrender to the state compelled."

We must bear in mind also that by §22 of the Act of 1889, as amended, 27 P. S. 91, there is granted to every person without actual notice of the escheat proceedings, the right, at any time within three years after the adjudication, to traverse the adjudication by writing filed in the court which entered the adjudication and the issue thus raised must be tried in that court. In *Anderson National Bank, et al. v. Luckett, et al.*, 321 U. S., *supra*, involving the escheat of bank deposits, the Court said at page 245:

" * * * The statutory procedure, so far as it affects depositors, is in the nature of a proceeding in rem, in the course of which property, against which a claim is asserted, is seized or sequestered, and held subject to the appearance and presentation of claims by all those who assert an adverse interest in it. In all [fol. 71] such proceedings the seizure of the property is in itself a form of notice of the claim asserted, to those who may claim an interest in the property. See *Corn Exchange Bank v. Coler*, 280 U. S. 218, holding constitutional a statute providing for no notice to the owner of a bank deposit other than its seizure."

And in *Mullane v. Central Hanover Bank & Trust Co., Trustee, et al.*, 339 U. S. 306 (1950), in a proceeding involving trusts, with numerous parties as possible beneficiaries whose names and interests were not known to the Trustee, the Supreme Court said at page 317:

"This Court has not hesitated to approve of resort to publication as a customary substitute * * * where it is not reasonably possible or practicable to give more adequate warning."

And at page 318, the Court continued:

"Accordingly we overrule appellant's constitutional objections to published notice insofar as they are urged on behalf of any beneficiaries whose interests or addresses are unknown to the trustee."

See also *State v. American-Hawaiian S. S. Co.*, 101 Atlantic (2d) 598 (New Jersey—1953), holding, *inter alia*, that in the absence of requisite statutory requirements to satisfy procedural due process concerning notice, the Court [fol. 72] under its inherent power could order such notice as would fulfill those requirements.

It is our conclusion, then, that there was no violation of due process in the notice that was ordered by the Court. Publication was the only practicable method by which service could be obtained as to persons who had any possible interest in these unpaid money orders. As a matter of fact, it was the only method available.

Finally, the defendant asserts that the escheat of these moneys impairs the contract rights of the owners, and therefore violates Article I, § 10, of the Federal Constitution which provides—"No State shall * * * pass any * * * Law impairing the Obligation of Contracts, * * * ." As we have stated, escheat statutes are enacted pursuant to the police power of the State: *Cunnius v. Reading School District*, 198 U. S. 458, 469 (1905). Again, we turn to the *Standard Oil* case as disposing of this contention. The Supreme Court commented on this point as follows at page 436:

“ * * * Normally the obligor or holder and the obligee or owner of abandoned property would, as here, have no contractual arrangement between themselves for its disposition in case of the owner's failure to make claim. As the disposition of abandoned property is a function of the state, no implied contract arises between obligor [fol. 73] and obligee to determine the disposition of such property. Consequently, there is no impairment of contract by New Jersey's statute, enacted subsequent to the creation of the obligations here under examination, but only the exercise of a regulatory power over abandoned property.”

We are not persuaded that any significance should be attached to the method by which the respondent handled the sums deposited with it. The respondent did not segregate the moneys which were deposited with it over many years. These moneys were co-mingled with other daily receipts. The surplus from these daily receipts was deposited in local banks, and from time to time excess deposits were remitted to out-of-state fiscal agents.

The parties have not seen fit to stipulate the sums of money on deposit in Pennsylvania, but that there have been funds here from time to time is shown by the stipulation, and presumably there are now funds on deposit here in connection with the extensive business carried on by the respondent in this State. Nor do we think it is significant that money orders were drawn on out-of-state depositories for the payment of money orders. The important fact is that there are funds in Pennsylvania and these funds are subject to the dominion of this State for purposes of escheat. It would have been helpful to have had further testimony [fol. 74] concerning the extent and location of the funds in this State. Absent such evidence, however, we must rely on the agreement of the parties that funds are here in the course of respondent's business.

Under the facts in this case, we are dealing not merely with sums deposited in Pennsylvania with the respondent, but we are concerned also with deposits made with Postal Telegraph, Inc., the merged company. This fact further tends to establish Pennsylvania jurisdiction to escheat these

moneys, since Postal went out of existence leaving in Pennsylvania debts which were incurred here to unknown claimants. These debts, as we have pointed out, created the res which is essential to any escheat proceeding. It is doubtful indeed in our minds that the assumption of Postal's liability by the respondent could be considered as the res in any escheat proceeding in New York.

There has been introduced by agreement Commonwealth's Exhibit No. 4 which contains schedules of unpaid money orders. Included in the schedules in this exhibit is Schedule "C" which relates to money orders originating outside of the State and sent to destinations in Pennsylvania. We have not considered this schedule in any way. It is not included within the averments of the petition for escheat. Although we do not decide the matter now, there is a serious doubt in our mind as to whether we have [fol. 75] dominion over the accounts created out of the State in this manner and referred to in Schedule "C" of Commonwealth's Exhibit No. 4.

There is one item of which we should take note. It is set forth that \$725.85 has already been escheated to New York and payment of that amount has been made. We take this opportunity of stating that we do not recognize New York's authority to escheat that money, but since it has been done we have no jurisdiction over this sum.

We, therefore, adjudge that the sums deposited at points in Pennsylvania for the purchase of money orders which were never paid to the payees at the points of destination are escheatable regardless of whether those points of destination were within or without the State of Pennsylvania. In view of the foregoing, we make the following

CONCLUSION OF LAW

1. The sum of \$45,513.99 now held by the respondent is escheatable in Pennsylvania.

DECREE

And Now, December 15, 1958, in this proceeding it is directed that judgment of escheat be entered in favor of the escheator and against the respondent in the sum of

\$45,513.99, unless exceptions are filed hereto within thirty (30) days.

William H. Neely, J.

[fol. 76]

IN THE COURT OF COMMON PLEAS
OF DAUPHIN COUNTY, PENNSYLVANIA

DEFENDANT'S EXCEPTIONS—Filed January 10, 1959

The defendant excepts to the Findings of Fact, Conclusions of Law and the Decree nisi, as set forth in the Opinion dated December 15, 1958, as follows:

1. Defendant excepts to the Court's 2nd Finding of Fact, which is as follows:

"2. Moneys were deposited by the senders at offices of the respondent in Pennsylvania."

2. Defendant excepts to the Court's 5th Finding of Fact, which is as follows: "

"5. Each sender deposited moneys with the understanding that the respondent would transmit a telegraphic communication to another of its offices designated as the paying office where the amount deposited, less charges, would be paid to a designated payee."

3. Defendant excepts to the Court's 6th Finding of Fact, which is as follows:

"6. Prior to December 31, 1946, a total of \$6,139.68 (Commonwealth's Exhibit No. 4) was deposited with The Western Union Telegraph Company to be transmitted to Pennsylvania destinations and has been unpaid as well as unclaimed."

[fol. 77] 4. Defendant excepts to the Court's 7th Finding of Fact, which is as follows:

"7. Prior to December 31, 1946, a total of \$615.81 (Commonwealth's Exhibit No. 4) was deposited with Postal Telegraph, Inc., to be transmitted to Pennsyl-

vania destinations and has been unpaid as well as unclaimed."

5. Defendant excepts to the Court's 9th Finding of Fact, which is as follows:

"9. The total sums transmitted prior to December 31, 1946 by the Western Union Telegraph Company and Postal Telegraph, Inc., to be paid at Pennsylvania destinations, amounted to \$6,755.49, all of which is unclaimed."

6. Defendant excepts to the Court's 10th Finding of Fact, which is as follows:

"10. Prior to December 31, 1946 there was deposited with The Western Union Telegraph Company for transmission by telegraphic communication to destinations outside of Pennsylvania the sum of \$31,547.97 (Commonwealth's Exhibit No. 4), which sum was to be paid to the payees named in the money orders at the respondent's offices of destination, all of which is unclaimed."

7. Defendant excepts to the Court's 11th Finding of Fact, which is as follows:

[fol. 78] "11. Prior to December 31, 1946, there was deposited with Postal Telegraph, Inc., the sum of \$2,305.85 (Commonwealth's Exhibit No. 4) to be forwarded by money order to destinations outside of the State of Pennsylvania, all of which is unclaimed."

8. Defendant excepts to the Court's 12th Finding of Fact, which is as follows:

"12. The total sums deposited prior to December 31, 1946 with the two companies by senders of money orders to be paid at destinations outside of the State amounted to \$33,853.82, all of which is unclaimed."

9. Defendant excepts to the Court's 13th Finding of Fact, which is as follows:

"13. From January 1, 1947 to December 31, 1948, money orders totaling \$1,349.80 (Commonwealth's Exhibit No. 4) were purchased from respondent by senders for delivery to payees at destinations in Pennsylvania, and \$4,280.73 was deposited by senders of money orders in Pennsylvania for delivery to payees outside of the State of Pennsylvania, all of which is unclaimed."

10. Defendant excepts to the Court's 19th Finding of Fact, which is as follows:

"19. The respondent contracted with persons purchasing money orders that if payment was not made [fol. 79] to the payees at the point of destination within seventy-two hours, the sums deposited by the senders would be refunded."

11. Defendant excepts to the Court's 20th Finding of Fact, which is as follows:

"20. Such refunds were to be made at the point of origin, i. e., the point where the senders purchased the money orders in Pennsylvania."

12. Defendant excepts to the Court's 21st Finding of Fact, which is as follows:

"21. The total amount of the unpaid money orders sent from points in Pennsylvania to points of destination in and out of Pennsylvania is \$46,239.84 (Commonwealth's Exhibit No. 4), all of which sum is held by the respondent and remains unpaid as well as unclaimed."

13. Defendant excepts to the 1st Conclusion of Law, which is as follows:

"1. The sum of \$45,513.99 now held by the respondent is escheatable in Pennsylvania."

14. Defendant excepts to the Decree, which reads as follows:

"AND NOW, December 15, 1958, in this proceeding it is directed that judgment of escheat be entered in [fol. 80] favor of the escheator and against the respondent in the sum of \$45,513.99, unless exceptions are filed hereto within thirty (30) days."

Respectfully submitted,

Rex Rowland, Buchanan, Ingersoll, Rodewald, Kyle
& Buerger, 1301 Alcoa Building, Pittsburgh 19,
Pennsylvania.

IN THE COURT OF COMMON PLEAS
OF DAUPHIN COUNTY, PENNSYLVANIA

OPINION—Filed July 6, 1959

By the Court:

The respondent has filed fourteen exceptions to this Court's opinion of December 15, 1958. Exceptions one through eleven relate to the nature of the money order transactions as characterized by the Court in certain Findings of Fact. Exception twelve relates to our finding as to the total amount of unpaid money orders which the Court found to be \$46,239.84. The thirteenth exception is to our first Conclusion of Law that \$45,513.99 is escheatable by the respondent in Pennsylvania, and the fourteenth exception is to the decree of the Court which directed judgment of escheat to be entered in this latter amount.

The respondent argues that " * * * the Court finds that senders 'deposited' money in the offices of the Respondent in Pennsylvania"; that "these sums were to be 'trans-[fol. 81] mitted', 'forwarded', 'paid', or 'delivered' to payees"; and contends that "These Findings, * * * describe the money order transaction as being one consisting of the deposit of money and the transmittal or delivery of that money"; and further contends that "This is not in accord with the facts of record."

The Court in its Findings has merely described the money order transactions in the same manner as did the

respondent by its own rules and regulations, its transmittal forms, its applications for money orders, and in other documents, all of which were offered by the respondent as exhibits and admitted into the record in this case. A limited reference to some of the language used in the respondent's exhibits supports the Court's Findings with respect to the nature and character of these transactions.

There were admitted in evidence (respondent's Exhibits Nos. 2 to 8 inclusive) respondent's regulations governing its telegraphic money order service as filed with certain governmental agencies. Respondent's Exhibit No. 2 states that these regulations are " * * * instructions * * * for the information and guidance of the employees and agents of this company in the acceptance, transmission and payment of Money Transfers." This Exhibit sets forth, inter alia, the charges for transfer of money. For example, it provides that "The transfer charges for a transfer of \$125.00 will be 85¢. for \$100.00, plus 25¢. for the additional \$25.00, total \$1.10."

[fol. 82] Exhibit No. 3 refers to "Money for transfer to another point." This same Exhibit, after detailing the transfer charge for specified sums of money, sets forth an additional charge for transmitting messages. The Exhibit provides that "The word 'sender' indicates the person sending the transfer and the word 'payee' the person to whom the money is to be paid." The same Exhibit also provides that "If cash is desired the payee of a transfer, or the sender in case of a refund, will be required to sign the back of the draft." The same Exhibit contains a sample money transfer application form which says: "Amount of transfer principal expressed in words and written out in full." Such amount of transfer principal can amount to nothing more than a deposit of money as characterized by the Court in its opinion, which money was deposited for transfer to the payee at the designated destination. Exhibit No. 4 contains a similar sample money transfer form and also other language similar to that already mentioned in other Exhibits.

Exhibit No. 5 contains the following sample form "Refund Notice":

"Buffalo, N. Y., Sept. 4, 1925

To Richard Brown
7th & Walnut Sts.

The sum of money deposited by you on Sept. 1, 1925 for transmission by telegraph remains unpaid for reasons beyond our control. If you will call at our [fol. 83] office at 5 South Division St., it will be refunded upon presentation of satisfactory evidence of identity."

Thus, the respondent in its own refund notice makes reference to the deposit of moneys for transmission.

Exhibit No. 6 contains a number of specimen forms, including a transmittal form for delivery of a draft or supplemental message, or both, which states: "The Money Order paid you herewith is from William J Smith at Philadelphia Penn"—with a supplemental message. The same Exhibit contains a specimen "Caution" order which says: "We have received a telegraphic money order for you * * *." There is another form "Notice To Sender Of Undelivered Money Order" which provides: "Your money order of * * * cannot be paid * * *. The money will be refunded to you at the expiration of 72 hours unless payment is effected in the meantime."

Exhibit No. 7 contains this notation: "In the case of a foreign order the foreign equivalent of the sum named in the order will be paid at the rate of exchange established by the Company or its agents on the date of the transfer"; and also contains the provision that "The amount of the order must be written out in words in the proper place on the application form."

Exhibit No. 8 provides as follows:

"Money orders that remain unpaid at the expiration of seventy-two hours from receipt, exclusive of Sundays [fol. 84] and holidays, shall be cancelled * * * and the originating office so notified by service message, stating the reasons for cancellation."

We have by no means exhausted the pertinent language of the numerous Exhibits. That which we have quoted is

clearly sufficient to support our conclusion that the Court has properly characterized the transactions in question in the Findings of Fact which are the subject of the respondent's first eleven exceptions.

The respondent complains that some implication of a trust relationship arises in these money order transactions as described by the Court in its Findings of Fact. The Court by its Findings does not intend to make any implication as to whether the money order transactions created a trust relationship or a debtor-creditor relationship. It was not essential to the Court's disposition of this case to determine this relationship since in our view we would have reached the same result regardless of the relationship.

It was agreed in paragraph nineteen of the stipulation of facts that two items totaling \$25.72 have been paid and are not therefore involved in this proceeding. Findings of Fact Nos. 6 and 9, therefore, should each be reduced in the amount of \$25.72. Finding of Fact No. 6 should read:

"6. Prior to December 31, 1946, a total of \$6,113.96 (Commonwealth's Exhibit No. 4) was deposited with [fol. 85] The Western Union Telegraph Company to be transmitted to Pennsylvania destinations and has been unpaid as well as unclaimed."

And Finding of Fact No. 9 should read as follows:

"9. The total sums transmitted prior to December 31, 1946 by The Western Union Telegraph Company and Postal Telegraph, Inc., to be paid at Pennsylvania destinations, amounted to \$6,729.77, all of which is unclaimed."

Both parties agree that unpaid money orders between January 1, 1947 and December 31, 1948 in Schedules A and B on the first page of Commonwealth's Exhibit No. 4, totaling \$5,630.53, should be eliminated from this case. This is pursuant to the stipulation mentioned on page eight of the notes of testimony. And both sides have agreed that the sums referred to in Finding of Fact No. 13 in that total amount should be eliminated from this case.

There should then be eliminated from further consideration the item of \$25.72 mentioned in Findings 6 and 9. And there should also be eliminated the sum of \$5,630.53 mentioned in Finding 13. Finding of Fact 21, then, instead of being \$46,239.84, should reflect the deduction of the two items above mentioned totaling \$5,656.25, and that Finding then should read as follows:

[fol. 86] "21. The total amount of the unpaid money orders sent from points in Pennsylvania to points of destination in and out of Pennsylvania is \$40,583.59 (Commonwealth's Exhibit No. 4), all of which sum is held by the respondent and remains unpaid as well as unclaimed."

The Court's first Conclusion of Law should read as follows:

"1. The sum of \$39,857.74 now held by the respondent is escheatable in Pennsylvania."

In answer to the respondent's fourteenth exception, we take occasion to point out that the amount for which judgment of escheat shall be entered is \$39,857.74. Both parties have in their briefs and at the oral argument of respondent's exceptions stated that the Findings should be modified to the extent hereinabove set forth.¹

¹ In its brief in support of its exceptions to Findings of Fact and Conclusions of Law, the respondent makes the following statement:

"In paragraph 19 of the Stipulation of Facts it was stipulated that two items appearing in Schedule A of Exhibit A, totaling \$25.72, have been paid since the date of the compilation of the exhibit. Therefore, the total amounts stated in Findings of Fact 6 and 9 should be reduced by \$25.72, so that these total amounts are, respectively, \$6,113.96 and \$6,729.77.

"At the time of the hearing in this case it was stipulated that money orders for the period January 1, 1947, to December 31, 1948, (see page 8 of the notes of testimony), were eliminated from the case, for the reason that since Petitioner had not filed with the Prothonotary the exhibits listing these transactions there could be no notice as to them. The amounts set

[fol. 87] We have herein discussed only the matters raised in the respondent's exceptions. At the oral argument on the exceptions, respondent reargued many of the points that it presented at its first argument before the Court en banc. Since these points, although reargued, were not raised by exceptions, it is not necessary to take note of them at this stage in the proceedings. However, we have reconsidered all of the respondent's rearguments and are of the view that the Court has disposed of these matters in its opinion of December 15, 1958. We find no occasion to depart from the disposition which we have already made of the respondent's contentions. All of them are fully considered in the Court's opinion of December 15th. In view of the foregoing, we herewith enter the following

[fol. 88]

IN THE COURT OF COMMON PLEAS
OF DAUPHIN COUNTY, PENNSYLVANIA

FINAL DECREE—July 6, 1959

And Now, July 6, 1959, respondent's exceptions Nos. 1, 2, 4, 6, 7, 8, 10, 11 and 14 are herewith overruled. Findings of Fact Nos. 6, 9, 13 and 21 (exceptions Nos. 3, 5, 9 and

forth in Finding of Fact 13; therefore, totaling \$5,630.53, should be eliminated.

"In order to reflect the above eliminations, Finding of Fact 21 should be reduced by the amount of \$5,656.25, so that the amount appearing in Finding of Fact 21 should be \$40,583.59 instead of \$46,239.84. Likewise, in order to reflect these eliminations in the figure in the Conclusion of Law and in the Decree at page 18 of the Court's Opinion, the figure should be \$39,857.74 instead of \$45,513.99." (parentheses supplied)

The petitioner in his brief contra the respondent's exceptions states:

"The respondent has correctly stated that certain items have been eliminated from this case by Stipulation of Counsel, and that the amounts set forth in the Findings of Fact should be reduced; and that, accordingly, the amount appearing in Finding of Fact No. 21 should be \$40,583.59, and the amount in the Conclusion of Law and in the Decree, at page 18, should be \$39,857.74."

12), and the Court's first Conclusion of Law (exception No. 13) are herewith modified as herein set forth. It is directed that judgment of escheat be entered in favor of the escheator and against The Western Union Telegraph Company in the sum of \$39,857.74.

William H. Neely, J.

[fol. 89]

IN THE COURT OF COMMON PLEAS
OF DAUPHIN COUNTY, PENNSYLVANIA

EXHIBIT A

(Because of its bulk, only the first two pages of
Exhibit A have been printed.)

THE WESTERN UNION TELEGRAPH COMPANY
State of Pennsylvania—Escheat Proceeding

Record of Unpaid Money Orders—

To December 31, 1946

SUMMARY

Schedule A (Intrastate Orders)	Western Union	\$ 6,139.68
	Postal	\$ 615.81
Total:		<u>\$ 6,755.49</u>
Schedule B (Destined Elsewhere)	Western Union	\$31,547.97
	Postal	\$ 2,305.85
Total:		<u>\$33,853.82</u>
Schedule C (Originating Else- where)	Western Union	\$21,976.17
	Postal	\$ 1,614.31
Total:		<u>\$23,590.48</u>
Grand Total:		<u><u>\$64,199.79</u></u>
Schedule D (Items paid to New York State)		<u>\$ 725.85</u>
Schedule E (Items reported but not paid to New York State)		<u>\$ 3,089.05</u>

[fol. 90]

EXPLANATORY NOTES

Records available from which details supporting Schedules A, B, C, D, and E procured.

Area	Ledger Records	Money Order Applications
Eastern Division	From January 1916	From December 1941
Southern Division	From January 1923	From March 1941
Lake Division	From January 1916	From January 1934
Gulf Division	From January 1916	From April 1940
Pacific Division	From January 1916	From January 1930
(X) Central Division	Period Jan. 1917-Nov. 1939	Period Jan. 1935-Nov. 1939
(X) Mountain Division	Period Jan. 1923-July 1938	None
(X) Postal Telegraph Co.	Period Jan. 1930-Oct. 1943	Period Jan. 1930-Oct. 1943

Note: Central and Mountain Divisions merged with other Divisions. Postal Telegraph Company merged with Western Union.

Ledger records do not provide for sender's name or address or address of payee other than city and state. An exception is Pacific Division record period July, 1919, through August, 1923, which shows sender's name.

Ledger records prior to August, 1925 for Eastern, Southern, Lake, Gulf and Mountain Divisions; September, 1925 for Pacific and March, 1926 for Central Division make [fol. 91] no provision for recording of draft numbers issued or indication whether or not draft was issued.

Money order applications available as shown above were used in conjunction with the ledger records and complete details have been recorded on Schedules A, B, C, D and E to the extent available.

[fol. 89a]

EXHIBIT A, Pages 97-98

RECORD OF UNPAID MONEY ORDERS FOR THE YEAR 1946,
ORIGINATING IN PENNSYLVANIA AND DESTINED TO NEW YORK

[fol. 89b]

Date of Order	Amt. of Principal	Point of Origin	Point of Destination	Name & Address of Payee	Name & Address of Sender	Indication If Draft Issued to Sender Instead of Payee	Draft Nbr. X if Not Issued
1- 7-46	10.00	Sharon	Buffalo	N L Hubbard	Mrs. N. L. Hubbard 235 N Tupper		X
3- 2-46	100.00	Phila	New York	Robert V Heenle 44th & Broadway	Girard Trust Co. Broad & Chestnut St		Issued-Nbr Unknown
3- 6-46	3.00	Lane	New York	Hotel Theresa Mgr 125th St & 7th Ave	H N Ewell 341 Locust		616178
3- 7-46	1.00	Pittsburgh	New York	Mrs Joyce Barbeb 16 E 95th St	K Gaceco 1629 5th St		632591
5-11-46	5.00	York	New York	K F Sexton 4611 Park Ave	E R Dillion Colonial Hotel		734274
5-11-56	10.00	Pittsburgh	Buffalo	Mrs Mary Cristiano 513 Cambridge Ave	C Cristiano 6419 Stanton Ave		X
6- 3-46	5.00	Pittsburgh	New York	Gramercy Hotel 21st & Lexington Av	Mrs Melvin Singer 1208 Cheslitt St		774483

Date of Order	Amt. of Principal	Point of Origin	Point of Destination	Name & Address of Payee	Name & Address of Sender	Indication If Draft Issued to Sender Instead of Payee	Draft Nbr. X if Not Issued
6-15-46	5.00	Phila	New York	Hotel Wellington 55th & Seventh Ave	P E Brown 7013 Greene St		028149
6-28-46	5.00	Monessen	New York	Miss Edith Martin 262 W 70th St	T A Manguso 1012 Morgan Ave		044457
7- 2-46	12.00	Pittsburgh	New York	Merrill Banbs 1398 Fulton Ave	E Palmer 1108 Etting St		058931
7- 8-46	1.00	Phila	New York	Jewish Mission 77 Bowery	E Noaler 603 Poplar St		061102
9-10-46	2.00	Coatsville	New York	Magistrates Court 14th Precinct	G Baxter 793 Solst Ave		011520
10-23-46	4.50	Allentown	New York	Miss R Wood 609 W 191st St	L Saropoulos 742 Main St		333461
10-29-46	5.00	Phila	Brooklyn	Grady Jones 831 Greene Ave	C Jones 2535 Oakford St		437981
11- 6-46	5.00	Phila	New York	R E Austin	J Wyeth 1708 Arch St		X
11- 6-46	1.00	Scranton	New York	Mr/Mrs H Bassoff Hotel Commodore	Ruth & Arthur 211 N Wash		X
11-20-46	15.00	Pittsburgh	Rochester	Miss Mary Gillotte			68085
11-23-46	4.00	Pittsburgh	Brooklyn	Mrs L E Jones 804 Gates Ave	Aunt		477553
12-27-46	5.00	Phila	Brooklyn	M Sadler 371 Cumberland St	L Sadler 1229 N 57th St		128982

[fol. 91]

EXHIBIT D-1

Excerpt, Book of Rules of December 1, 1916

Payments to Payee, Sender or Bank.

All payments will be made by draft on the Fiscal Agent (the Treasurer acting as Fiscal Agent for the Eastern Division), Form 2738, in favor of the payee of the transfer, sender (in case of refund), BA station or Forwarding Bank. Payments at BA and BNK stations will be made by the Bank. Branch offices will enter their office call as a prefix to the number of the draft. Drafts for refund will show the date of the transfer and place originally payable, in addition to the other information provided for. Drafts covering payments to Forwarding Bank should bear the notation, "For (name of payee) at (Town in which payee is located.)"

[fol. 92]

EXHIBIT D-2

Excerpt, Book of Rules of October 1, 1918

Payments to Payee, Sender or Bank.

All payments will be made by draft, Form 2738, on the Division Fiscal Agency in favor of the payee of the transfer, sender (in case of refund), BA station or Forwarding Bank. Payments at BA and BNK stations will be made by the Bank. Branch offices will enter their office call as a prefix to the number of the draft. Drafts for refund will show the date of the transfer and place originally payable, in addition to the other information provided for. Drafts covering payments to Forwarding Bank should bear the notation, "For (name of payee) at (Town in which payee is located.)"

EXHIBIT D-3

Excerpt, Book of Rules of February 1, 1920

Payments to Payee, Sender or Bank.

132. Payment of all transfers will be made by draft, Form 2738, on the Division Fiscal Agency in favor of the payee of the transfer, sender (in case of refunds), "BA" station or Forwarding Bank. Payments at "BA" and "BNK" stations will be made by the Bank. When [fol. 93] a transfer, payable at a "BA" or "BNK" station, reaches an agency office after banking hours, or on Sundays or holidays, the draft may be mailed directly to the payee rather than forwarded through the bank, if in the judgment of the transfer agent no delay or other impairment of the service will result.

138. It is the clear intent of the sender that the payee shall receive the amount of the transfer in cash, if cash is preferred, without delay or trouble. Therefore the draft drawn in favor of the payee, after endorsement by him and upon proper identification, will be cashed by the Transfer Agent, unless the payee otherwise requests. It is incumbent on Transfer Agents to provide themselves with funds for such cash payments. If for any reason funds cannot be made available, Transfer Agents shall be endorsing draft and by other proper means assist payee to secure cash.

EXHIBIT D-4

Excerpt, Book of Rules of February 1, 1923

Payments to Payee, Sender or Bank.

135. Payment of all transfers will be made by draft, Form 2738, on the Division Fiscal Agency in favor of [fol. 94] the payee of the transfer, sender (in case of refund), "BA" station or Forwarding Bank. Payments at "BA" and "BNK" stations will be made by the Bank. When a transfer, payable at a "BA" or "BNK" station, reaches an agency office after banking hours, or on Sundays, or holidays, the draft may be mailed

directly to the payee rather than forwarded through the bank, if in the judgment of the transfer agent no delay or other impairment of the service will result. Transfer agents should set up a record for their own use of the hours of payment at the "BA" stations in their agency.

141. It is the clear intent of the sender that the payee shall receive the amount of the transfer in cash, if cash is preferred, without delay or trouble. Therefore the draft drawn in favor of the payee, after endorsement by him and upon proper identification, will be cashed by the Transfer Agent, unless the payee otherwise requests. It is incumbent on Transfer Agents to provide themselves with funds for such cash payments. If for any reason funds cannot be made available, Transfer Agents shall by endorsing draft and by other proper means assist payee to secure cash.

[fol. 95]

EXHIBIT D-5

Excerpt, Book of Rules of February 1, 1926

Payments to Payee, Sender or Bank

148. Payment of all transfers will be made by draft, Form 2738, on the Division Fiscal Agency in favor of the payee of the transfer, sender (in case of refund), "BA" agency or Forwarding Bank. Payments at "BA" agencies and "BNK" stations will be made by the Bank. When a transfer, payable at a "BA" agency or "BNK" station, reaches an agency office after banking hours, or on Sundays or holidays, the draft may be mailed directly to the payee rather than forwarded through the bank, if in the judgment of the transfer agent no delay or other impairment of the service will result. Transfer agents should set up a record for their own use of the hours of payment at the "BA" agencies in their agency.

154. It is the clear intent of the sender that the payee shall receive the amount of the transfer in cash,

if cash is preferred, without delay or trouble. Therefore the draft drawn in favor of the payee, after endorsement by him and upon proper identification, will be cashed by the Transfer Agent, unless the payee otherwise requests. It is incumbent on Transfer Agents [fol. 96] to provide themselves with funds for such cash payments. If for any reason funds cannot be made available, Transfer Agents shall by endorsing draft and by other proper means assist payee to secure cash.

EXHIBIT D-6

Excerpt, Book of Rules of April, 1934:

Delivery of Money Orders:

117. While the telegraph company's obligation is to pay money orders in cash, cash payments must necessarily be confined to those made over the counter. However, money order drafts may be delivered in all instances where this will tend to make the service more attractive and when the circumstances are such that delivery of drafts can safely be made. Drafts in payment of vigilant money orders shall not be delivered except as provided in the following paragraph.

[fols. 97, 98]

EXHIBIT D-7

Excerpt from Tariff on file with the Federal Communication Commission effective January 23, 1939.

(4) *Payment of Money Orders*: Payment of money orders at the Telegraph Company's paying offices is accomplished by delivering a money order draft by messenger to payees who are known to the local office, or by notifying payees to call at the telegraph office, bringing suitable evidence of their identity, to receive the money. Payees of orders payable through banks or agencies are notified by telephone, messenger or mail to call for the money.

[fols. 99-102]

DEFENDANT'S EXHIBIT 3

SAMPLE MONEY TRANSFER APPLICATIONS FORM 7.
 FILLED IN TO ILLUSTRATE THE CORRECT PREPARATION OF THE FORMS

1

FOR A CAUTION TRANSFER

WESTERN UNION
MONEY TRANSFER

TO ORDER OF ASHFORD, Pa.

TO ORDER OF C. A. Glass
Trifton, Pa.

One hundred eighty -

A. C. Beas
619 South Ave

A. C. Beas

118.00
 1.00
 1.00
 1.00
 1.00
 1.00

104.00

2

FOR A VIGILANT TRANSFER

WESTERN UNION
MONEY TRANSFER

TO ORDER OF ASHFORD, Pa.

TO ORDER OF J. S. Seaborn & Co
136 West St
Asbury, Pa.

J. S. Seaborn
100 Main St

25.00
 2.00
 1.00
 1.00
 1.00
 1.00

31.00

[fols. 103, 104]

MONEY TRANSFER DRAFTS—FORM 2738

FILLED IN TO ILLUSTRATE THE CORRECT PREPARATION OF THE FORMS

REGULAR MONEY TRANSFER DRAFT

1549961	BISCAY, ME.	Jan 14 1922
PAY TO THE ORDER OF <i>R. A. Seapeng & Co</i>		
<i>Twenty five and 10/100</i>		DOLLARS <i>25.00</i>
AMOUNT DEPOSITED FOR TRANSFER AT <i>Ashford, Pa.</i>		Jan 14 1922
TO THE LIBERTY NATIONAL BANK OF NEW YORK		
THE WESTERN UNION TELEGRAPH COMPANY		
<i>H. W. Baldwin</i>		

PLEASE REPORT ON EACH THIS DRAFT AT ONCE.

CORRECT FORM OF DRAFT FOR REFUNDED MONEY TRANSFER

1549962	ASHFORD, PA.	Jan 14 1922
PAY TO THE ORDER OF <i>M. V. White</i>		
<i>Fifteen and 10/100</i>		DOLLARS <i>15.00</i>
AMOUNT DEPOSITED FOR TRANSFER AT <i>Ashford, Pa.</i>		Jan 14 1922
<i>Refund application to M. V. White</i>		
TO THE LIBERTY NATIONAL BANK OF NEW YORK		
THE WESTERN UNION TELEGRAPH COMPANY		
<i>H. W. Harrison</i>		

PLEASE REPORT ON EACH THIS DRAFT AT ONCE.

CORRECT FORM OF DRAFT TO BE PAID AT "BNH" POINT

1549963	BISCAY, ME.	Jan 14 1922
PAY TO THE ORDER OF <i>First National Bank</i>		
<i>One hundred eighteen and 00/100</i>		DOLLARS <i>118.00</i>
AMOUNT DEPOSITED FOR TRANSFER AT <i>Ashford, Pa.</i>		Jan 14 1922
<i>For C. H. Glace at <i>Groton, Me.</i></i>		
TO THE LIBERTY NATIONAL BANK OF NEW YORK		
THE WESTERN UNION TELEGRAPH COMPANY		
<i>H. W. Baldwin</i>		

PLEASE REPORT ON EACH THIS DRAFT AT ONCE.

MONEY TRANSFER DRAFTS - FORM 2738

Filled in to illustrate the correct preparation of the forms

REGULAR MONEY TRANSFER DRAFT

Form 2738 E

NO **C 579301** Biscay, Maine December 14, 1922
(CITY AND STATE) (DATE)

PAY TO THE ORDER OF R. B. Seabring & Co.

Twenty-five and no /100 ----- DOLLARS 25.00
100

AMOUNT DEPOSITED FOR TRANSFER AT Ashford, Pa. December 14, 1922
(ORIGINATING POINT) (DATE)

THE WESTERN UNION TELEGRAPH COMPANY

To THE CHASE NATIONAL BANK 1-74
NEW YORK, N. Y.

H. W. Baldwin
TRANSFER AGENT

PLEASE ENDORSE THIS DRAFT BY SIGNING ON THE BACK HEREOF AND DEPOSIT OR CASH AT ONCE

[fol. 105, 106]

DEFENDANT'S EXHIBIT 4

[fols. 107, 108]

CORRECT FORM OF DRAFT FOR REFUNDED MONEY TRANSFER

NO. C 579302	Ashford, Pa. <small>(CITY AND STATE)</small>	December 14, <small>(DATE)</small>	Form 2734 E 1922
PAY TO THE ORDER OF M. V. White			
Fifteen and no/100		DOLLARS. 15 ⁰⁰ / ₁₀₀	
AMOUNT DEPOSITED FOR TRANSFER AT	Ashford, Pa. <small>(ORIGINATING POINT)</small>	December 14, <small>(DATE)</small>	1922
Refund application #16 to Biacay, Me. To THE CHASE NATIONAL BANK 1-74 NEW YORK, N. Y.		THE WESTERN UNION TELEGRAPH COMPANY <i>J. W. Harrison</i> <small>TRANSFER AGENT</small>	
PLEASE ENDORSE THIS DRAFT BY SIGNING ON THE BACK HEREOF AND DEPOSIT OR CASH AT ONCE			

CORRECT FORM OF DRAFT TO BE PAID AT "BNK" POINT

NO. C 579303	Biacay, Maine <small>(CITY AND STATE)</small>	December 14, <small>(DATE)</small>	Form 2734 E 1922
PAY TO THE ORDER OF First National Bank			
One Hundred Eighteen and 55/100		DOLLARS. 118 ⁵⁵ / ₁₀₀	
AMOUNT DEPOSITED FOR TRANSFER AT	Ashford, Pa. <small>(ORIGINATING POINT)</small>	December 14, <small>(DATE)</small>	1922
For C. H. Black at Grafton, Me. To THE CHASE NATIONAL BANK 1-74 NEW YORK, N. Y.		THE WESTERN UNION TELEGRAPH COMPANY <i>H. W. Baldwin</i> <small>TRANSFER AGENT</small>	
PLEASE ENDORSE THIS DRAFT BY SIGNING ON THE BACK HEREOF AND DEPOSIT OR CASH AT ONCE			

[fols. 109, 110]

DEFENDANT'S EXHIBIT 5
MONEY TRANSFER APPLICATION FORM 72-F

For only a few cents more, you can send a message with the money, saving the cost of a separate message

Form 77F

Number	1
Time Filed	9 am
Received By	8
Sent By	A

WESTERN UNION

MONEY TRANSFER

NEWCOMB CARLTON, PRESIDENT

J. C. WILLEVER, FIRST VICE-PRESIDENT

Principal	\$ 100.00
Transfer Charges	85
Telegraph Tolls	67
Tax	—
Total Charges	\$ 101.52

THE WESTERN UNION TELEGRAPH COMPANY:

Subject to the conditions below and on back hereof, which are hereby agreed to,

Buffalo N.Y. Sept 1, 1925

PAY TO

John Smith

If to a woman give prefix Mrs or Miss, if practicable

Street and No.

913 Franklin St.

Place

Pittsburg, Pa

(Amount)

One hundred

Dollars and

no

Cents \$ 100.00

And DELIVER the following message to payee at the time of payment:

Will meet you at Dallas Sept tenth

Positive evidence of personal identity is NOT to be required from the Payee, and I authorize and direct the Telegraph Company to pay the sum named in this order at my risk to such person as its agent believes to be the above named Payee, UNLESS the following is signed

POSITIVE PERSONAL IDENTIFICATION REQUIRED

I declare that the above named payee shall be required to produce positive evidence of personal identity before payment is made

Signature

Richard Brown

Sender's Address

7th & Walnut Sts

TRANSFER AGENT'S COPY—NOT FOR TRANSMISSION

[fols. 111, 112]

FORM 73, SENDER'S RECEIPT

MONEY TRANSFER SERVICE SENDER'S RECEIPT	Form 73
	<p style="text-align: center;">THE WESTERN UNION TELEGRAPH COMPANY</p> <p>PLACE <u>Buffalo, N. Y.</u> DATE <u>Sept. 1/25</u></p> <p>RECEIVED FROM <u>Richard Brown</u></p> <p><u>One Hundred and no</u> DOLLARS, TO BE PAID TO <u>John Smith</u> AT <u>Pittsburgh, Pa.</u></p> <p style="text-align: center;">. SUBJECT TO THE TERMS AND CONDI- TIONS OF MONEY TRANSFER ORDER OF THIS DATE.</p> <p style="text-align: right;"><u>H. D. Roe</u> <small>TRANSFER AGENT</small></p> <p>CHARGES PAID \$ <u>1.52</u></p>

The company having no disbursing office at the point to which this transfer is directed, payment will necessarily be made through a local bank or a nearby money transfer office. The transfer is therefore subject to such delay as such method of payment may involve.

[fols. 113, 114]

NOTICE TO PAYEE OF A CAUTION TRANSFER - FORM 75-C

Form 75-C

Quick Service

WESTERN UNION



MONEY TRANSFER

Low Rates

MONEY TRANSFERRED BY TELEGRAPH AND CABLE TO ALL THE WORLD
 NEWCOMB CARLTON, PRESIDENT J. C. WILLEVER, FIRST VICE-PRESIDENT

Pittsburgh, Pa. Sept. 1, 1925

To John Smith

913 Franklin St.

We have received a sum of money by telegraph for you and the sender says:

I'll meet you at Dallas Sept. tenth.

Will you please call at our office, 110 Smithfield St. to receive the money as soon as possible and in no case later than 72 hours since at the end of that time we are required to return the amount to the sender.

Please bring this notice with you and also satisfactory evidence of identity such as some of the following:

Membership cards
 Receipted bills
 Letters addressed to you

Bank book
 Automobile license
 Western Union collect card

or any other documentary evidence you may have.

BRING THIS NOTICE WITH YOU

THE WESTERN UNION TELEGRAPH COMPANY

Do not use this form for a VIGILANT transfer - See form 75-v.

[15, 116]

Form 2754 F

WESTERN UNION MONEY TRANSFER

NO. **G883803** → **Pittsburgh, Pa.** **September 1,** 1925

PAY TO THE ORDER OF **Mellon National Bank**

One hundred and 43/100-----DOLLARS **100 ⁴³/₁₀₀**

AMOUNT DEPOSITED FOR TRANSFER AT **Buffalo, N. Y.** **September 1,** 1925

For John Smith at Bolivar, Ohio.

THE CHASE NATIONAL BANK 1-74
NEW YORK, N. Y.

THE WESTERN UNION TELEGRAPH COMPANY
J. J. Hoe
TRANSFER AGENT

PLEASE ENDORSE THIS DRAFT ON THE BACK HEREOF AND DEPOSIT OR CASH AT ONCE

DRAFT OF ORIGINATING OFFICE COVERING REFUND OF TRANSFER TO SENDER

[17, 118]

Form 2754 F

WESTERN UNION MONEY TRANSFER

NO. **G883802** → **Buffalo, N. Y.** **September 4** 1925

PAY TO THE ORDER OF **Richard Brown**

One hundred and no/100-----DOLLARS **100 ⁰⁰/₁₀₀**

AMOUNT DEPOSITED FOR TRANSFER AT **Buffalo, N. Y.** **September 1** 1925

Refund transfer \$1 to Pittsburgh, Pa.
TO **THE CHASE NATIONAL BANK 1-74**
NEW YORK, N. Y.

THE WESTERN UNION TELEGRAPH COMPANY
H. J. Roe
TRANSFER AGENT

PLEASE ENDORSE THIS DRAFT ON THE BACK HEREOF AND DEPOSIT OR CASH AT ONCE

Form 2738 B

WESTERN UNION MONEY TRANSFER

NO. **G 883801** **Pittsburgh, Pa.** **September 1** 19**25**

PAY TO THE ORDER OF **John Smith**

One hundred and no /100----- DOLLARS **100.00**
~~100~~

AMOUNT DEPOSITED FOR TRANSFER AT **Buffalo, N.Y.** **September 1** 19**25**

THE CHASE NATIONAL BANK 1-74
NEW YORK, N. Y.

THE WESTERN UNION TELEGRAPH COMPANY

John Doe
 (TRANSFER AGENT)

PLEASE ENDORSE THIS DRAFT ON THE BACK HEREOF AND DEPOSIT OR CASH AT ONCE

THIS is a draft
 drawn by the
 Western Union
 on its own funds
 in its own bank.
 It can be cashed
 through any per-
 son or concern to
 whom the payee
 is known.

FIG. 1—MONEY ORDER APPLICATION—FORM 72-H

[fol. 121, 122]

DEPENDANT'S EXHIBIT 6

<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">NO.</div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">TIME FILED <i>1036 AM</i></div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">RECEIVED BY <i>E</i></div> <div style="border: 1px solid black; padding: 5px;">SENT BY <i>R</i></div>	<h1 style="margin: 0;">WESTERN UNION</h1> <h1 style="margin: 0;">MONEY ORDER</h1>	<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">AMOUNT <i>87.00</i></div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">MONEY ORDER CHARGE <i>85</i></div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">TELEGRAPH TOLLS <i>70</i></div> <div style="border: 1px solid black; padding: 5px;">TOTAL <i>88.55</i></div>
Subject to the conditions below and on back hereof, which are hereby agreed to.		
PAY TO <i>Miss Marion Smith</i> <i>Philadelphia Pa Sept 4 1933</i>		
Street Address <i>278 East Liberty St</i>		
Place <i>Pittsburgh Pa</i>		
Amount <i>Eighty seven</i> Dollars and <i>70</i> Cents (<i>87.00</i>)		
(A message, to be delivered with the money, costs but a little more and saves a separate telegram. It may be written on the following lines.)		
Message to be delivered with the money: <i>Glad you can take vacation now.</i>		
Positive evidence of personal identity is NOT to be required from the Payee, and I authorize and direct the Telegraph Company to pay the sum named in this order at my risk to such person as the agent believes to be the above named Payee, UNLESS the following is signed.		
Signature <i>William J. Smith</i>		
Sender's Address <i>509 So 4th St</i>		
Sender's Telephone Number <i>Grogan 2-9364</i>		
*Information for test question for identifying payee: <i>Mother's maiden name Nelson</i>		
IN CASE OF FOREIGN MONEY ORDERS: Pay United States Dollars <input type="checkbox"/> Pay in Local Currency <input type="checkbox"/>		

[fols. 123, 124]

FIG. 2—SENDER'S RECEIPT—FORM 73

FORM 73

Receipt for Telegraphic Money Order

WX-Philadelphia, Pa. Sept 4 1933

Received from *William J. Smith*

Eighty seven and no/100 Dollars, to be paid

to *Miss Marion Smith* at *Pittsburgh, Pa.*

subject to the terms and conditions of the Money Order Service

THE WESTERN UNION TELEGRAPH COMPANY

Charges Paid *\$1.55*

J. R. James
MONEY ORDER AGENT

FIG. 3—STICKER FORM 3870

The company having no disbursing office at the point to which this money order is directed, payment will necessarily be made through a local bank or a nearby money order office. The money order is therefore subject to such delay as such method of payment may involve.

3870

FIG. 5
STICKER—FORM 3300C

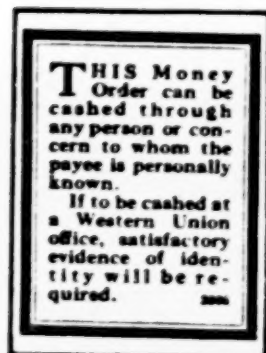


FIG. 4.—MONEY ORDER DRAFT—FORM 2738

No D 11544		WESTERN UNION MONEY ORDER	
<i>When Countersigned</i> at Point of Issue		ISSUED AT EL- PITTSBURGH PENN	SEPT 4TH 1933
PAY TO MISS MARION SMITH		OR ORDER	
THE SUM OF EIGHTY SEVEN AND NO/100		DOLLARS	\$87.00
AMOUNT TELEGRAPHED FROM PHILADELPHIA PENN		SEPT 4TH 1933	
★		THE WESTERN UNION TELEGRAPH COMPANY	
TO THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK FINK STREET CORNER OF NASSAU		COUNTER-SIGNED <i>R. V. Snell</i> MONEY ORDER AGENT	
		<i>Esther J. Fox</i> TREASURER	
THIS ORDER MAY BE CASHED BY ANYONE TO WHOM THE PAYEE IS KNOWN			

*This line ordinarily to remain blank but may be used to show: (a) sender's name when order is payable to a firm; (b) name of payee and BNK point when passed through a forwarding bank; (c) description of refunded money orders; or (d) the words "Cashed for Columbus State Bank credit John Doe," etc.

NOTE—Form 3300-C accompanies this draft when delivered or mailed.

[fol. 125, 126]

FIG. 7—NOTICE TO PAYEE OF A "CAUTION" ORDER—FORM 75-C

[fol. 127, 128]

78

Form 75-C

QUICK SERVICE

WESTERN UNION

LOW RATES

MONEY ORDER NOTICE

Money Sent by Telegraph and Cable to All the World

R. B. WHITE
PRESIDENT

NEWCOMB CARLTON
CHAIRMAN OF THE BOARD

J. C. WILLEVER
FIRST VICE PRESIDENT

No. 8 231

B- LOS ANGELES CALIF SEPT 4TH 1933

To MRS FRANCES THOMPSON

MRS. OR MISS
2740 WILSHIRE BLVD
ADDRESS

We have received a telegraphic money order for you with the following message:

WIRE TRAIN AND TIME ARRIVAL

Will you please call at our office, 3225 WILSHIRE BLVD to receive the money as soon as possible and in no case later than 72 hours since at the end of that time we are required to cancel the order and return the amount to the sender.

Please bring this notice with you and also satisfactory evidence of identity such as some of the following:

Membership cards	Bank book
Receipted bills	Automobile license
Letters addressed to you	Western Union collect card

or any other documentary evidence you may have.

Bring This Notice With You THE WESTERN UNION TELEGRAPH COMPANY •

[fols. 135, 136]

DEFENDANT'S EXHIBIT 8

FIG. 2—SENDER'S RECEIPT—FORM 4178

THE WESTERN UNION TELEGRAPH COMPANY 4178

RECEIPT

WY-Philadelphia Pa. Sept 4 1939

Received from William G. Smith (\$ 87⁰⁰)

Eighty seven and ^{no}100 Dollars, in payment of

☐ Account for the month of _____ 19____

☒ Telegraphic ~~Cable Order~~ Money Order ~~Shopping Order~~

☐ Telegram or Cable

☐ Deposit on Collect Telegram
(returnable after 24 hours)

To Miss Marion Smith

At Pittsburgh Pa

THE WESTERN UNION TELEGRAPH COMPANY

MONEY ORDER CHARGES PAID \$ 1⁵⁵

B. G. R. James

FIG. 3—STICKER—FORM 3870

The company having no disbursing office at the point to which this money order is directed, payment will necessarily be made through a local bank or a nearby money order office. The money order is therefore subject to such delay as such method of payment may involve.

3870

THIS Money Order can be cashed through any person or concern to whom the payee is personally known. If to be cashed at a Western Union office, satisfactory evidence of identity will be required.

No. **C 10000** **WESTERN UNION MONEY ORDER**

ISSUED AT **H - PITTSBURGH PENN** **SEPT 4 1939**

When Countersigned
at Point of Issue **PAY TO MISS MARION SMITH - - - - -** OR ORDER

THE SUM OF **EIGHTY SEVEN AND NO/100 - - - - -** DOLLARS **\$87.00**

AMOUNT SENT FROM **PHILADELPHIA PENN** **SEPT 4TH 1939**

★
TO THE WESTERN UNION TELEGRAPH COMPANY

PAYABLE THROUGH
THE CHASE NATIONAL BANK
OF THE CITY OF NEW YORK
PINE STREET, CORNER OF NASSAU

COUNTERSIGNED
1-74 *R. A. Law* MONEY ORDER AGENT

THE WESTERN UNION TELEGRAPH COMPANY
E. O. King TREASURER

(THIS ORDER MAY BE CASHED BY ANYONE TO WHOM THE PAYEE IS KNOWN)

★This line ordinarily to remain blank but may be used to show: (a) sender's name when order is payable to a firm; (b) name of payee and BNK point when passed through a forwarding bank; (c) description of refunded money orders; or (d) the words "Cashed for Columbus State Bank credit John Doe," etc.

NOTE—Form 3300-C accompanies this draft when delivered or mailed.

FIG. 10—DRAFT TO FORWARDING BANK FOR MONEY ORDER
TO "BNK" POINT—FORM 2738

No. **C 10000** **WESTERN UNION MONEY ORDER**

ISSUED AT **PITTSBURGH PENN** **SEPT 6 1939**

When Countersigned
at Point of Issue **PAY TO MELLON NATIONAL BANK - - - - -** OR ORDER

THE SUM OF **SEVENTY FIVE AND 30/100 - - - - -** DOLLARS **\$75.30**

AMOUNT SENT FROM **PHILADELPHIA PENN** **SEPT 6 1939**

FOR MISS HELEN ROBERTS, NEW WATERFORD OHIO
TO THE WESTERN UNION TELEGRAPH COMPANY

PAYABLE THROUGH
THE CHASE NATIONAL BANK
OF THE CITY OF NEW YORK
PINE STREET, CORNER OF NASSAU

COUNTERSIGNED
1-74 *R. A. Law* MONEY ORDER AGENT

THE WESTERN UNION TELEGRAPH COMPANY
E. O. King TREASURER

(THIS ORDER MAY BE CASHED BY ANYONE TO WHOM THE PAYEE IS KNOWN)

[Fols. 141, 142]

FIG. 13—DRAFT COVERING REFUND OF A CANCELLED ORDER—FORM 2738

16. 143, 144

No. **C 10000** **WESTERN UNION MONEY ORDER**

When Countersigned
at Point of Issue

ISSUED AT **WX- PHILADELPHIA PENN** **SEP 7 1939**
CITY AND STATE DATE

PAY TO **WILLIAM J SMITH** - - - - - OR ORDER

THE SUM OF **EIGHTY SEVEN AND NO/100** - - - - - DOLLARS **\$87.00**

AMOUNT SENT FROM **PHILADELPHIA PENN** **SEPT 4TH 1939**
ORIGINATING POINT DATE

REFUND MONEY ORDER TO
MISS MARION SMITH, PITTSBURGH PENN
TO THE WESTERN UNION TELEGRAPH COMPANY

PAYABLE THROUGH
THE CHASE NATIONAL BANK
OF THE CITY OF NEW YORK
NINE STREET, CORNER OF NASSAU

COUNTERSIGNED
1-74 J. R. Jones
MONEY ORDER AGENT

THE WESTERN UNION TELEGRAPH COMPANY
W. H. Finley
TREASURER

THIS ORDER MAY BE CASHED BY ANYONE TO WHOM THE PAYEE IS KNOWN

[fol. 144a]

DEFENDANT'S EXHIBIT No. 5

FORM 75-B, REFUND NOTICE

Form 75-B

WESTERN UNION
MONEY TRANSFERMoney Transferred by Telegraph and Cable
to all the World

REFUND NOTICE

Buffalo, N. Y., Sept. 4, 1925

To Richard Brown
7th & Walnut Sts.

The sum of money deposited by you on Sept. 1, 1925 for transmission by telegraph remains unpaid for reasons beyond our control. If you will call at our office at 5 South Division St. it will be refunded upon presentation of satisfactory evidence of identity.

THE WESTERN UNION TELEGRAPH
COMPANY**Bring This Notice With You**

[fol. 144b]

DEFENDANT'S EXHIBIT No. 6

FIG. 11—NOTICE TO SENDER OF
UNDELIVERED MONEY ORDER—

FORM 4022

Form 4022

THE WESTERN UNION TELEGRAPH
COMPANY

NOTICE REGARDING MONEY ORDER

R. B. White
President

J. C. Willever
First Vice President

Newcomb Carlton
Chairman of the Board

3946 MARKET STREET

WX—PHILADELPHIA PENN SEPT 4th 1933
Street Address, City and Date

P 349

Delivery No.

MR WILLIAM J SMITH

Mr., Mrs. or Miss

509 SOUTH 41 ST

Address

Your money order of SEPT 4TH 1933 to
Date

MISS MARION SMITH at PITTSBURGH
Name of Payee Place

PENN cannot be paid for the following reason:
PAYEE LEFT THE CITY—NO FORWARDING
ADDRESS KNOWN

[fol. 144c] The money will be refunded to you at the expiration of 72 hours unless payment is effected in the meantime. If you wish to communicate with us about the order please call ALLEGHENY 4321 and ask for the Money Order Department. Changes in the name or address of payee will be charged for at usual telegram rates.

THE WESTERN UNION TELEGRAPH
COMPANY

[fol. 144d]

DEFENDANT'S EXHIBITS NOS. 10 AND 11—

APPLICATION FORMS 72 A AND B

Reverse Side

MONEY TRANSFERS ARE SUBJECT TO
THE FOLLOWING CONDITIONS:

Domestic orders will be canceled and refund made to the sender if payment cannot be effected within 72 hours after receipt at paying office (Ellis Island, N. Y., excepted). Orders payable at Ellis Island will be canceled after the expiration of five days.

In the case of a Foreign Order the Foreign equivalent of the sum named in the order will be paid at the rate of exchange established by the Company or its agents on the date of the transfer.

When the Company has no office at destination authorized to pay money, it shall not be liable for any default beyond its own lines, but shall be the agent of the sender, without liability, and without further notice, to contract on the sender's behalf with any other telegraph or cable line, bank or other medium, for the further transmission and final payment of this order.

[fol. 144e]

DEFENDANT'S EXHIBITS NOS. 12 AND 13

Reverse Side**MONEY ORDERS ARE SUBJECT TO THE
FOLLOWING CONDITIONS:**

Domestic orders will be canceled and refund made to the sender if payment cannot be effected within 72 hours after receipt at paying office (Ellis Island, N. Y., excepted). Orders payable at Ellis Island will be canceled after the expiration of five days.

In the case of a Foreign Order the Foreign equivalent of the sum named in the order will be paid at the rate of exchange established by the Company or its agents on the date of the transfer.

In the case of a Foreign Order the equivalent, in the currency of the country of payment, of the sum named will be purchased promptly; and if for any reason payment cannot be effected, refund will be made by the Company and will be accepted by the depositor on the basis of the market value of such foreign currency in American funds, at New York, on the date when notice of cancelation is received there by the Company from abroad.

When the Company has no office at destination authorized to pay money, it shall not be liable for any default beyond its own lines, but shall be the agent of the sender, without liability, and without further notice, to contract on the sender's behalf with any other telegraph or cable line, bank or other medium for the further transmission and final payment of this order.

[fol. 144f]

DEFENDANT'S EXHIBIT No. 14—FORM 72H

Reverse SideMONEY ORDERS ARE SUBJECT TO THE
FOLLOWING CONDITIONS:

Domestic orders will be canceled and refund made to the sender if payment cannot be effected within 72 hours after receipt at paying office (Ellis Island, N. Y., excepted). Orders payable at Ellis Island will be canceled after the expiration of five days.

In the case of a Foreign Order the Foreign equivalent of the sum named in the order will be paid at the rate of exchange established by the Company or its agents on the date of the transfer.

In the case of a Foreign Order the equivalent, in the currency of the country of payment, of the sum named will be purchased promptly; and if for any reason payment cannot be effected, refund will be made by the Company and will be accepted by the depositor on the basis of the market value of such foreign currency in American funds, at New York, on the date when notice of cancelation is received there by the Company from abroad.

When the Company has no office at destination authorized to pay money, it shall not be liable for any default beyond its own lines, but shall be the agent of the sender, without liability, and without further notice, to contract on the sender's behalf with any other telegraph or cable line, bank [fol. 144g] or other medium, for the further transmission and final payment of this order.

In any event, the company shall not be liable for damages for delay, non-payment or underpayment of this money order, whether by reason of negligence on the part of its agents or servants or otherwise, beyond the sum of five hundred dollars, at which amount the right to have this money order promptly and correctly transmitted and promptly and fully paid is hereby valued, unless a greater

value is stated in writing on the face of this application and an additional sum paid or agreed to be paid based on such value equal to one-tenth of one per cent thereof.

In the event that the company accepts a check, draft or other negotiable instrument tendered in payment of a money order, its obligation to effect payment of the money order shall be conditional and shall cease and determine in case such check, draft or other negotiable instrument shall for any reason become uncollectible, and in any event the sender of this money order hereby agrees to hold the telegraph company harmless from any loss or damage incurred by reason or on account of its having so accepted any check, draft or negotiable instrument tendered in payment of this order.

[fol. 153]

IN THE SUPREME COURT OF PENNSYLVANIA

MIDDLE DISTRICT

No. 18 May Term, 1960

COMMONWEALTH OF PENNSYLVANIA, by SIDNEY GOTTLIEB,
Escheator,

v.

THE WESTERN UNION TELEGRAPH COMPANY,
Appellant.

Appeal from the Decree of the Court of Common Pleas
of Dauphin County at No. 236 Commonwealth Docket, 1953

OPINION OF THE COURT—Filed: June 29, 1960

Musmanno, J.

The Western Union Telegraph Company, which is a New York corporation, operates in Pennsylvania, as it does in all States of the Union. In the course of its business it collects money for transmission to other places by means

of telegraphic money orders, that is to say, a sender deposits so much money at the sending office and the Western Union telegraphs to the office geographically closest to the address of the payee an order to pay the payee the amount specified by the payor. It sometimes occurs, however, because of the uncertainties of life, with its untoward happenings including accidents, earthquakes, fires, sudden removals, and even death, that the designated payee never gets the money telegraphed to him, in which event the sending Western Union office is so notified and it then pays the money back to the original depositor.

But unexpected happenings transpire even at the sender's end and, as a result of accident, earthquake, fire, or even death, the Western Union sending office is thus unable to return the money it had accepted for transmission. What happens to this money after sufficient time has elapsed to warrant the assumption that the sender will never turn up to collect back his money? The Western Union Telegraph Company answer this question with the flat statement that it is entitled to the money.

If there were no declared law on the subject, some color of right would attach to the Western Union's claims because, in the absence of an established potentially-collecting owner, the possessor of property, through discovery, finding or otherwise, obviously can hold it against the world. However, there is no vacuum in the law for a situation of this kind. The Legislature of Pennsylvania has specifically provided that:

[fol. 154] "(b) Whensoever the owner, beneficial owner of, or person entitled to any real or personal property within or subject to the control of the Commonwealth or the whereabouts of such owner, beneficial owner or person entitled, has been or shall be and remain unknown for the period of seven successive years, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth.

"(c) Whensoever any real or personal property within or subject to the control of the Commonwealth has been or shall be and remain unclaimed for the period

of seven successive years, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth." (Escheat Act of 1889, May 2, 1889, P.L. 66, Sec. 3) as amended by the Act of 1953, July 29, P.L. 986, section 1 (27 P.S. 333).

Proceeding under this statute, the Commonwealth of Pennsylvania, through its Secretary of Revenue, appointed Sidney Gottlieb, Esq., of Pittsburgh, as Escheator to collect outstanding sums such as those involved in this case. Accordingly, on December 21, 1953, Mr. Gottlieb filed in the Court of Common Pleas of Dauphin County a Petition for Escheat of certain sums in the hands of the Western Union Telegraph Company which for seven years had remained unclaimed by their original owners. The Western Union Telegraph Company denied the right of the Commonwealth to escheat under the circumstances, and a hearing was scheduled in the Court of Common Pleas. Before the hearing, however, the parties agreed on a Stipulation of Facts which was filed April 18, 1958. After due consideration of the agreed-on facts, assisted by arguments of the contending parties, the Court on December 5, 1958, found for the Commonwealth in the sum of \$45,513.99, the amount in controversy. Western Union appealed.

The Western Union contests the lower Court's findings on three bases: (1) The Commonwealth's petition does not designate any property of Western Union which is within or subject to the control of the Commonwealth; (2) A decree in Escheat will not protect Western Union from future claims; (3) The notice given by the Commonwealth does not meet the requirements of due process.

The respondent Western Union says in its brief that the Petition for Escheat is—

"directed solely to the money which was paid by the senders but as to which Western Union was unable either to make payment in money to the persons to whom the senders had instructed payment to be made or to refund the money to the sender,"

[fol. 155] and then argues that "these sums of money are not in Pennsylvania." The respondent points out that it is not per se a financial institution; that it is a telegram-transmitting organization and that it did not at any time during the period covered by the Petition in Escheat, or at any time, have fiscal or sub-fiscal agencies in Pennsylvania.

It emphasizes that the money paid by the sender in any particular transaction was not held isolatedly from other moneys and was not earmarked as belonging to the particular person who had deposited it for transmission to another person. The money was placed in a cash drawer and there it intermingled with money collected for telegrams and with other receipts. Thus, the respondent submits, it is impossible for the Court to point its finger to any specific "money" and say that this is the money which a sender deposited and which now has been unclaimed for seven years.

This argument almost approaches a play in semantics. It would be difficult to find a more generic term than *money*. When a lender approaches a person to whom he made a loan a long time before and says to him: "I want my money back," he obviously does not ask for the specific greenbacks he put into the hands of the lendee. He will take any greenbacks, yellowbacks, coins, bank checks, or even promissory notes which, in their total value, will be the exact sum he turned over to the defaulting debtor. Thus, the Commonwealth here, in its Petition for Escheat, was not calling upon Western Union to search out the original coins and currency deposited by the senders who have since vanished in the mysterious sea of Whereabouts Unknown. The Commonwealth asked for the fiscal equivalent of that money.

Western Union itself does not think of money in a specific sense. When a customer wishes to transmit a monetary sum by telegraph he fills out a Western Union form which includes such designations as "money transfers" and "message to be delivered with the money." No one assumes that by the phrase "money transfer", Western Union is expected to actually transport to the payee the coins and currency the customer places on the counter and for which he is handed a receipt.

The notice which is sent to the payee carries the sentence: "We have received a sum of money by telegraph for you." By the use of this language Western Union does not intend to suggest that the legal tender it is ready to pay over to [fol. 156] the payee is the exchange-stained currency and travel-battered coins which came from the pocket of the sender.

The interpretation argued for by Western Union contradicts what the Courts have often declared on the subject. The Supreme Court of the United States said in *Connecticut Mutual Life Insurance Company v. Moore*, 333 U.S. 541:

"The statutory reference 'to any moneys held or owing' does not refer to any specific assets of an insurance company, but simply to the obligation of the companies to pay it."

In *Newhard v. Newhard*, 303 Pa. 299, 301, this Court said:

"The word 'moneys' is a general term and may and often does include property other than currency."

The respondent also argues that the Commonwealth may not escheat "moneys" in its possession because it has issued drafts to payees and even to senders which are still outstanding, but the mere issuance of drafts does not constitute payment, since there is no agreement between the parties to that effect. *Levan v. Wilten*, 135 Pa. 61, 63; *Easton School District v. Continental Casualty Co.*, 304 Pa. 67, 71; *North Penn Iron Co. v. N. J. Bridge Co.*, 35 Pa. Superior Ct. 84, 85.

Thus, interpreting the Commonwealth's Petition as seeking escheat of the unclaimed obligations held by Western Union rather than any specific moneys deposited by the senders and which Western Union no longer possesses, we inevitably come to the conclusion that the *res* of the escheat proceedings, is, contrary to the appellant's contention, within the control of the Commonwealth. It is within the control of the Commonwealth because the holder Western Union is subject to the jurisdiction of the Courts of the Commonwealth. Personal service of the Petition on offices of the Western Union within the confines of the

Commonwealth constituted a seizure of the *res*, which is the subject of the escheat.

On this subject, the Supreme Court of the United States, in *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 439, said:

"Since it is its obligation to pay to the escheated estate that is taken, personal service on appellant effects a seizure of that obligation . . .

"We see no reason to doubt that, where the debtor and creditor are within the jurisdiction of a court, that court has constitutional power to deal with the debt. Since choses in action have no spatial or tangible existence, control over them can 'only arise from control or power over the persons whose relationships are the [fol. 157] source of the obligations.' *Estin v. Estin*, 334 U.S. 541, 548. Situs of an intangible is fictional, but control over parties whose judicially coerced action can make effective rights created by the chose in action enables the court with such control to dispose of the rights of the parties to the intangible. . . . The rights of the owner of the stock and dividends comes within the reach of the court by the notice, i.e. service by publication; the rights of the appellant by personal service."

It was held in that case that the domiciliary State of the corporation, New Jersey, could escheat its stock certificates and undelivered dividends even though the addresses of some of the owners were in other states and foreign countries.

The Western Union Telegraph Company is not domiciled in Pennsylvania, but it is subject to its jurisdiction since it transacts business here in many offices, and personal service was obtained upon it in Pennsylvania. Moreover, all the transactions which are the bases of the respondent's outstanding obligations occurred in Pennsylvania by virtue of the fact that the senders deposited their money in Western Union offices located in Pennsylvania. As stated in *Connecticut Mutual Life Ins. Co. v. Moore*, 297 N.Y. 1, 9:

"The core of the debtor obligations of the plaintiff companies was created through acts done in this State,

and the ties thereby established between the companies and the State were without more sufficient to validate the jurisdiction here asserted by the legislature."

The Supreme Court of the United States, at 333 U.S. 541, affirmed this New York decision.

We find no error in the holding of the lower Court that—

"when ownerless property held by a foreign corporation is within the dominion of this state, i.e., the res is subject to the State's control, Pennsylvania has the right to escheat the money, even as against the claims of the corporation's State of domicile, where the State has extensive contact with the transactions by which the res was created . . ."

Then Western Union contends that it would be unjust to require it to give up the unclaimed moneys in its possession because it might be besieged later on by senders, payees, or holders in due course of outstanding drafts. This picture conjures up a fear without objective basis. The instant escheat proceedings have to do with moneys which have been vainly seeking their missing owners for at least seven years. Thus, outstanding drafts would be stale-dated and therefore not honored. In any event, stop pay-[fol. 158] ments could be issued against them. But, most important of all, no belated claims for outstanding moneys could overcome the finality of escheat proceedings even without personal service on interested parties. It must be emphasized that escheat proceedings are in rem and not in personam.

The proceeding is not one in personam—at least, not so far as concerns the depositor. The State does not seek to enforce any claim against him. It seeks to have the deposit transferred. The suit determines the custody (and perhaps the ownership) of the deposit. The state court likened the proceeding to garnishment, and thought that it should be described as quasi in rem. In form it resembles garnishment. In substance it is like proceedings in escheat, . . . for confiscation, . . . ;

for forfeiture . . . ; for condemnation, . . . ; for registry of titles, . . . ; and libels for possession brought by the Alien Property Custodian. . . . These are generally considered proceedings strictly in rem. But whether the proceeding should be described as being in rem or as being quasi in rem is not of legal significance in this connection. In either case the essentials of jurisdiction over the deposits are that there be seizure of the res at the commencement of the suit; and reasonable notice and opportunity to be heard . . . There is a seizure or its equivalent. . . . Moreover, there is no constitutional objection to considering the proceeding as in personam, so far as concerns the bank; as quasi in rem, so far as concerns the depositors; and as strictly in rem, so far as concerns other claimants."

(*Security Savings Bank v. California*, 263 U.S. 282)

This decision puts into bold relief the irrefutable proposition that:

"Seizure of the deposit is effected by personal service made upon the bank Thereby the res is subjected to the jurisdiction of the court"

Thus, the seizure of the *res* constituted constructive notice on all involved parties. In *Hollingsworth v. Barbour*, 29 U.S. (4 Pet.) 466, 475, the Supreme Court affirmed the lower court's statement that—

"The law regards the seizure of the thing as constructive notice to the whole world, and all persons concerned in interest are considered as affected by this constructive notice."

Moreover, in the instant case, there was a posting of the notice of the escheat proceedings in the office of the Prothonotary of Dauphin County and publication of the notice of the escheat proceedings in each of three newspapers of general circulation in the County of Dauphin, the City of Philadelphia and the City of Pittsburgh. These notices were directed "To all persons whatsoever claiming an interest in the personal property herein referred to" and stated that

the "names and last known addresses of the owners or beneficial owners of, or persons entitled to, the said property, the nature and amount of such property are set forth in the records on file in the office of the Prothonotary (of Dauphin Co.)." The notices described the property sought to be escheated as consisting of—

"amounts held and owing by The Western Union Telegraph Company, the defendant above named, arising from the receipt by it of various sums from divers persons for transmittal to other persons by the use of the defendant's money orders, and refundable to the senders because the defendant could not effect payment to the sendees, the whereabouts of the senders thereof, and of the owners or beneficial owners of or persons entitled to the said moneys, having been and remained unknown for seven successive years, and the said moneys having been unclaimed for the said period of seven successive years."

The Western Union submits that this notice cannot apply to cases where the sender or payee has received a draft which still remains unpaid, but, as already stated, the draft could not be regarded payment since there was no contract to that effect between the parties. Furthermore, the notice already quoted applies against third parties other than the sender, as witness the statement:

"The whereabouts of the senders thereof, and of the owners or beneficial owners of or persons entitled to the said moneys."

Therefore, it is beyond refutation that all interested parties are on notice that publication of the indicated notice represents seizure of the *res* by personal service upon Western Union here in Pennsylvania. Nor does it matter that potentially interested parties are not residents of Pennsylvania. It is the very fact that their whereabouts are unknown and have been unknown for over seven years that builds the foundation on which the escheat action rests. We made this clear in *Philadelphia Electric Company* case, 352 Pa. 457:

"The Supreme Court of the United States has confirmed the jurisdiction of a State court over intangibles and its power to subject them to escheat even as against possible non-residents."

Nor would Western Union need to fear that the moneys here involved would be subject to double escheat in New York, the State of its domicile. The decree of escheat here affirmed is naturally subject to the Full Faith and Credit [fol.160] Clause of the United States Constitution, as stated in *Standard Oil Co. v. New Jersey*, 341 U.S. 428:

"The debts or demands represented by the stock and dividends having been taken from the appellant company by a valid judgment of New Jersey, the same debts or demands against appellant cannot be taken by another state. The Full Faith and Credit Clause bars any such double escheat."

Decree affirmed, each party to bear own costs.

Justice Bell took no part in the consideration of decision of this case.

[fol. 161]

IN THE SUPREME COURT OF PENNSYLVANIA

MIDDLE DISTRICT

No. 18 May Term, 1960

COMMONWEALTH OF PENNSYLVANIA, By Sidney Gottlieb,
Escheator,

v.

THE WESTERN UNION TELEGRAPH COMPANY, Appellant.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE
UNITED STATES—Filed September 27, 1960

I. Notice is hereby given that The Western Union Telegraph Company, the appellant above named, appeals to the Supreme Court of the United States from the final decree

of the Supreme Court of Pennsylvania, entered in this proceeding on June 29, 1960, affirming the decree of the Court of Common Pleas of Dauphin County, Pennsylvania, directing that a judgment in escheat be entered against the appellant.

This appeal is taken pursuant to 28 U.S.C.A. Section 1257(2).

II. The Prothonotary will please prepare a transcript of the Record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in the said transcript the following:

1. Petition for Escheat, filed December 21, 1953.
2. Answer to Petition for Escheat, filed February 20, 1954.
3. Petition for Order Fixing Time and Place of Hearing and Directing Service of Notice by Posting and Publication. [fol. 162]
4. Order of March 10, 1958, Fixing Time and Place of Hearing and Directing Posting and Publication of Notice Thereof.
5. Stipulation of Facts, filed April 18, 1958.
6. Opinion of the Court of Common Pleas of Dauphin County, filed December 15, 1958.
7. Decree of the Court of Common Pleas of Dauphin County, dated December 15, 1958.
8. Defendant's Exceptions, filed January 10, 1959.
9. Opinion of the Court of Common Pleas of Dauphin County, filed July 6, 1959.
10. Final Decree of the Court of Common Pleas of Dauphin County, dated July 6, 1959.
11. Exhibits (The exhibits listed below, except where otherwise noted, are the same exhibits or portions of exhibits printed, at the pages indicated, in the Record for Appellant heretofore filed in this Court):

A—First two pages of Record of Unpaid Money Orders (Record, pp. 87a-89a) and part of pages 97 and 98 of Record of Unpaid Money Orders (pages 97 and 98 were not printed in the Record for Appellant, but copies of these pages are attached hereto).

D-1—Excerpt, Book of Rules of December 1, 1916 (Record, 89a).

D-2—Excerpt, Book of Rules of October 1, 1918 (Record, 90a).

D-3—Excerpt, Book of Rules of February 1, 1920 (Record, 90a-91a).

D-4—Excerpt, Book of Rules of February 1, 1923 (Record, 91a-92a).

[fol. 163] D-5—Excerpt, Book of Rules of February 1, 1936 (Record, 93a-94a).

D-7—Excerpt, FCC Tariff of January 23, 1939 (Record, 95a).

D-5—Money Transfer Application Form (Record, 105a).

—Refund Draft (Record, 113a).

—Money Transfer Draft (Record, 115a).

D-8—Sender's Receipt (Record, 131a).

—Money Order Draft (Record, 133a).

—Money Order Draft (Record, 137a).

III. The following questions are presented by this appeal:

1. Is the Pennsylvania Act of May 2, 1889, P. L. 66, as amended (27 Purdon Stat. §§ 1 *et seq.*), repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States, as a deprivation of property without due process of law, in causing the escheat to the Commonwealth of Pennsylvania of:

(a) the amounts of outstanding negotiable drafts, payable outside Pennsylvania, drawn and delivered by a New York corporation outside Pennsylvania to per-

sons not shown to be residents of Pennsylvania, and presently held by persons not shown to be such residents;

(b) the amounts of outstanding negotiable drafts, payable outside Pennsylvania, delivered by a New York corporation within Pennsylvania to persons not shown to be residents of Pennsylvania, and presently held by persons not shown to be such residents;

(c) unclaimed amounts which, but for the bar of [fol. 164] the statute of limitations, would be collectible by persons, not shown to be residents of Pennsylvania, who paid corresponding amounts in Pennsylvania to a New York corporation in telegraphic money order transactions which could not be consummated;

all of the moneys which had been paid to the New York corporation in the transactions involved having been transferred to states other than Pennsylvania before any escheat proceeding was instituted or any Pennsylvania statute providing for escheat of such moneys had been enacted?

2. Does the said Pennsylvania statute contravene Article VI, clause 2, and Article I, Section 8, clause 3, of the Constitution of the United States and the laws of the United States made in pursuance thereof, particularly the Communications Act of 1934, as amended (47 U.S.C. §§ 151 *et seq.*), in causing the escheat of amounts equal to those paid in connection with interstate and foreign telegraphic money order transactions, which transactions and the accounting therefor have been regulated by Congress to the exclusion of State regulation or control?

3. Is the said Pennsylvania statute repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States, as a deprivation of property without due process of law, in causing the escheat of amounts under a petition directed solely to money of a corporation, which escheat does not bar the collection from such corporation, by other States or third persons, of claims based upon negotiable drafts and other choses in action?

4. Is the said Pennsylvania statute repugnant to Section 1 of the Fourteenth Amendment of the Constitution of the [fol. 165] United States, as a deprivation of property without due process of law, in causing the escheat of money of a New York corporation under a petition which does not identify a res in Pennsylvania and does not result in seizure of any property in Pennsylvania, no notice being given except by publication only in Pennsylvania, naming no claimants of the money residing there or elsewhere, even where the last known addresses of possible claimants are available?

John G. Buchanan, John G. Buchanan, Jr., Rex Rowland, James D. Morton, Buchanan, Ingersoll, Rodewald, Kyle & Buerger, 1800 Oliver Building, Pittsburgh 22, Pennsylvania;

John H. Waters, 60 Hudson Street, New York 13, New York,

Attorneys for The Western Union Telegraph Company, Appellant.

[fol. 166]

**RECORD OF UNPAID MONEY ORDERS FOR THE
YEAR 1946, ORIGINATING IN PENNSYLVANIA
AND DESTINED TO NEW YORK (EXHIBIT A,
PAGES 97-98)**

Omitted. Printed at side folios 89a and 89b, printed pages 59 and 60.

[fol. 167] Proof of Service (omitted in printing).

[fol. 168] [File endorsement omitted]

[fol. 170] Triple Certificate to foregoing transcript (omitted in printing).

[fol. 171]

SUPREME COURT OF THE UNITED STATES

No. 543—October Term, 1960

WESTERN UNION TELEGRAPH COMPANY, Appellant,

vs.

PENNSYLVANIA, by SIDNEY GOTTLIEB, Escheator.

Appeal from the Supreme Court of the Commonwealth
of Pennsylvania, Middle District.

ORDER NOTING PROBABLE JURISDICTION—January 23, 1961

The statement of jurisdiction in this case having been
submitted and considered by the Court, probable jurisdic-
tion is noted.